LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE

1979
GENERAL ASSEMBLY OF NORTH CAROLINA

INSURANCE LAWS

RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

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RALEIGH 27611

January 10, 1979

TO THE MEMBERS OF THE 1979 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1979 General Assembly of North Carolina on the matter of insurance laws, especially the new file and use rate regulation system. The report is made pursuant to Chapter 1028 of the 1977 Session Laws.

This report was prepared by the Legislative Research Commission's Insurance Laws Study Committee and it is transmitted by the Legislative Research Commission to the members of the 1979 General Assembly for their consideration.

Respectfully submitted,

Carl J. Stewart, Jr.

John T. Henley

Cochairmen
Legislative Research Commission

CONTENTS

INTRODUCTION

The Legislative Research Commission, created by Article 6B of Chapter 120 of the General Statutes, is authorized pursuant to the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations." G.S. 120-30.17. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and consists of five Representatives and five Senators, who are appointed respectively by the Co-Chairman. G.S. 120-30.10(a).

At the direction of the 1977 General Assembly, the Legislative Research Commission has undertaken studies of twenty-seven matters, which were arranged into ten groups according to related subject matter. See Appendix A for a list of the Commission members. Pursuant to G.S. 120-30.10(b) and (c), the Commission Co-Chairmen appointed committees consisting of legislators and public members to conduct the studies. Each member of the Legislative Research Commission was delegated the responsibility of overseeing one group of studies and causing the findings and recommendations of the various committees to be reported to the Commission. In addition,

one Senator and one Representative from each committee were designated Co-Chairmen. See Appendix B for a list of the members of the Insurance Laws Study Committee.

Senate Bill 740 (1977 Session Laws, Chapter 1028) directed the Legislative Research Commission to "study the insurance laws of the State, examining the effects of the 1977 General Assembly changes in the laws and anticipating other insurance law issues to come before the 1979 General Assembly." The act further directed the Commission to "report the results of its study to the 1979 General Assembly." The full text of S. B. 740 appears in Appendix C.

The Insurance Laws Study Committee hopes that this report will serve not only as a compendium of its activities and its findings, but also as a source of information about insurance rate regulation to which reference may be made by the members of the 1979 General Assembly.

Rate Regulation Under the Prior Approval System

From 1945 to 1977 North Carolina employed a prior approval system of fire and casualty insurance rate regulation. Under this procedure, insurance rates, forms, and classification plans for automobile, workmen's compensation, property damage, and homeowner's insurance could not be changed without the approval of the Commissioner of Insurance. Most rates and classifications were prepared

by rating bureaus, which were private organizations composed of insurance companies, and the rates and classifications established by the bureaus had to be used by all insurance companies writing in North Carolina. The bureaus could appeal to the courts to have the Commissioner's disapprovals reversed, but the proposed rates and classifications could not take effect unless the courts held for the bureaus and did not remand the cases for further hearings. From 1973 to 1977 the Commissioner, using his statutory authority, consistently disapproved rate revisions proposed by the rating bureaus. The bureaus appealed these disapprovals, and quite often the courts reversed the Commissioner's orders. The insurance industry complained that the amount of time that passed between rate proposals and appellate court action made the rates that were finally put into effect unrealistic, mainly because the data that was used to arrive at the proposed rates was by that time outdated. The insurance industry alleged that this system was a real threat to the insurance market and predicted a crisis in the availability of many lines of insurance in North Carolina. Examples of the situation that were reported to the 1975 General Assembly by the industry included:

(1) Constant litigation over rates and other regulatory matters;

(2) Some companies were abandoning the State and others were drastically restricting their writings;

(3) A growing unavailability of some lines of insurance in the voluntary market and an almost total unavailability of other lines in the admitted market;

(4) Substantial losses in the State-created automobile reinsurance facility; and

(5) A workers' compensation assigned risk plan that was doubling its assignments each year.

The Committee on Fire and Casualty Insurance Rate Regulation

In response to this information, the 1975 General Assembly directed the Legislative Research Commission to undertake a study of fire and casualty insurance rate regulation in North Carolina, and the Legislative Research Commission established a committee for that purpose. See Appendix D for Section 7 of Chapter 851 of the 1975 Session Laws, which created and gave direction to the study.

After hearing from the insurance industry sources and the Commissioner and his staff, and after contacting other states and inquiring into the methods of rate regulation and the results of those methods in other states, the Committee on Fire and Casualty Insurance Rate Regulation felt that a major overhaul of the rate making statutes were in order. Although the findings of the Committee seem to point toward competition as assuring for the public the lowest price, best service, latest innovation in product, and an available market, the Committee was concerned about removing all rate regulation in favor of a full open competition law. The report stated: "In the future, open competition might be an option for North Carolina; however, the more evolutionary process of 'use

and file' is best at this time." Under the Committee's recommendations to the 1977 General Assembly as incorporated in a proposed bill, each company or rating organization representing a group of companies could place in effect a schedule of rates and file that schedule with the Commissioner of Insurance. Each company or rating organization would set its own rates, but those rates could not be excessive, inadequate, or unfairly discriminatory. The bill provided that the rates could be challenged by the Commissioner if they were excessive or produced a long-run underwriting profit that was unreasonably high for the class of business.

1977 Legislative Action

In an effort to obtain objective and knowledgeable interpretations of conflicting information provided by the industry and the Department of Insurance, the standing House and Senate Committees on Insurance of the 1977 General Assembly commissioned an outside expert to interpret the situation, evaluate the proposed legislation, and to make recommendations for improving what was recognized as a situation which could not be allowed to continue. Dr. John W. Hall, Chairman of the Insurance Department of Georgia State University, was selected to perform this function. After reviewing the insurance situation in North Carolina and the measures proposed to improve that situation, Dr. Hall submitted a comprehensive report to the House and Senate Insurance Committees. The report was supportive of the recommendations of the Committee on Fire and

Casualty Insurance Rate Regulation. Some pertinent excerpts from Dr. Hall's assessment of the situation follow:

> Insurers have no desire to withdraw from North Carolina. This does not mean that they will not do so.
>
> Even at an adequate level, insurance rates in North Carolina should be lower than in almost any other jurisdiction in the United States.
>
> It is not possible to make meaningful comparisons of rates for different types of insurance across state lines because the basic characteristics of each state are different. If it is true that North Carolina rates are lower than most other jurisdictions, it is not necessarily because of regulatory prowess. It is because the basic characteristics of the legal, social, economic, political and religious climate of the state generate lower losses.
>
> The "crisis" should be relatively easy to solve.
>
> Despite the very favorable basic characteristics of the state from the viewpoint of insurers, the insurance business considers the insurance climate in North Carolina to be exceedingly bad.

Communications Breakdown

There is a nearly complete breakdown of meaningful communication between the Commissioner and the insurance companies - the regulator and the regulated. Many feel that the gap can never be closed. It is pointless to assess blame for this situation. It is unnecessary and does not exist in most jurisdictions.

North Carolina - One State Among Many

Insurers are not free to write whatever amount of insurance they wish. The ability to write insurance is limited by the amount of surplus. Because of recent operating losses, most individual insurers, and the business in general has seen a drastic curtailment of surplus. A reduction in surplus means a reduction in ability to write insurance. Many insurers have reduced premium writing significantly to maintain a proper ratio of premiums to surplus.

The reduction in insurer capacity to write new business could not have come at a worse time. Economic and social inflation has raised the cost of the products and services for which insurers pay as indemnification, (medical care costs, consumer prices, building construction costs, the cost of repairing automobiles, etc.). Premiums have been increased necessarily to meet these inflationary changes with the result that premium volume has grown rapidly solely because of inflation and not because of any significant change in the amount of real protection provided.

Further, with the rise in the activity of the economy (production and employment) and with the rise of new technology, new demands in real terms for protection must be met. There is simply not enough capacity to provide for insurance coverages needed by the American economy.

This capacity shortage countrywide must be considered when one considers the problems of North Carolina:

a. North Carolina is just one jurisdiction among many. While insurers would like much to do business in North Carolina, because of an insufficient capacity to write new business, they do not need North Carolina in order to sustain growth.

b. With limited capacity, insurers will place their available capacity at risk in those jurisdictions where they have the greatest confidence in the future of the private insurance mechanism. Most businessmen would make a similar decision.

North Carolina - Underwriting Results Deteriorating

During the past few months, the underwriting experience in North Carolina has worsened relative to the rest of the country. Although many lines remain profitable, the fact that there have been almost no rate increases since the Insurance Commissioner took office, despite inflation, means that the profitableness of every line has been declining. Two lines of insurance are experiencing severe losses at the present time and substantial rate increases will be requested in the near term: private passenger automobile liability and physical damage insurance and workers' compensation insurance.

With regard to automobile liability insurance, the major problem is the Facility underwriting loss. All automobile liability insurers are required to write insurance at standard rates for any person who applies for automobile liability insurance. If a company feels that a particular risk is one which, under present rates, can be predicted to be unprofitable, the company can assign that risk (subject to a limitation that a company cannot assign more than 50 percent of its total business) to the Facility which then, in a practical sense, becomes the insurer on that policy. However, the Facility offers insurers little protection since they are required to make up Facility losses.

With regard to Workers' Compensation insurance, rate levels and rating values in North Carolina were established by order of the Commissioner dated 1/3/73 with those rate levels and rating values becoming effective on 12/1/73. Since that time there have been substantial legislative increases in benefits. Normally, in most every jurisdiction, when benefits are increased, rates are adjusted upward virtually automatically to cover the anticipated cost of these benefit increases. This has not happened in North Carolina. Benefit increases have substantially affected the cost of serious disability and death claims. Based upon preliminary estimates, the next proposed rate increase for Workers' Compensation should be in the neighborhood of 30 to 40 percent. The Workers' Compensation assigned risk plan has been growing rapidly and the market for Workers' Compensation insurance has become exceedingly tight.

Impact of Capacity Shortage and Underwriting Losses

Because of capacity or surplus problems, insurers have been compelled to curtail premium writings in order to maintain a financially sound ratio of premium writings to surplus. With a shortage of capacity, countrywide, a hazardous and unpredictable climate for insurance in North Carolina, and worsening loss experience, insurers seek to write only those states, lines of insurance and risks where rates are believed adequate and the opportunity for making a reasonable profit appears to exist. They shun those states, lines of insurance and risks where the rates appear inadequate and the opportunities for making a reasonable profit appear to be dim or nonexistent. Obviously, as all of the factors discussed above which cause increased losses and expenses to the insurance companies contin in force, and the rates continue to be held down artificially, insurers must pursue every avenue of selective underwriting which will increase seriously the problem of insurance unavailability.

Dr. Hall concluded by giving his highest recommendation to a competitive rating system as suggested by the Committee on Fire and Casualty Insurance Rate Regulation. He indicated that this adoption would improve the insurance climate for personal and business consumers, regulators, and the insurance business. He also gave a second option, which was the concept accepted by the General Assembly and embodied in House Bill 658. The concept was for competitive rating for property and liability insurance with a statutory and mandatory bureau file and use system for "essential coverages". The "essential coverages" were defined as liability insurance for motor vehicles and the related coverages, theft of or physical damage to motor vehicles, workers' compensation and employers' liability insurance, and homeowners' insurance.

Dr. Hall viewed his second option as "an interim approach pending the ultimate development of competitive rating."

The main features of House Bill 658 as proposed by Dr. Hall were as follows:

1. The statutory language to implement the competitive rating for "non-essential coverages" was identical to that of the Committee on Fire and Casualty Insurance Rate Regulation except that competitive rating was defined not to apply to "essential coverages";

2. Insurers writing "essential coverages" would be required to belong to a statutory bureau whose responsibility would include the development of rates, rating plans, classifications, and forms

for "essential coverages" and the filing for member companies of such rates, rating plans, classifications, etc.;

3. The file and use approach was included whereby rates, rating plans, classifications, etc. would be filed with the Commissioner, but even if the Commissioner disapproved the filing, the rates could be put into effect pending judicial review provided the portion of the rate objected to was held in escrow pending final court determination and if the filing was ultimately disapproved, the excess rate refunded with interest;

4. The bill contained a revised classification plan whereby there would be less discrimination in the setting and charging of rates;

5. The Reinsurance Facility was required to be self-supporting, and rates for the Reinsurance Facility were required to be set so that the Facility would operate on a non-profit but self-supporting basis. To achieve this end, a rate differential between the voluntary market and the residual market was provided for. In the event the Commissioner found it necessary, he could establish separate subclassifications within the facility for "clean risks" as defined by the Commissioner; and

6. A cap on general rate level increases for private passenger automobile liability, medical payments, uninsured motorists, and physical damage coverages combined of 18% percent was included.

Several amendments to House Bill 658 were adopted in the closing days of the 1977 Session. Three of these changes were extremely significant:

(1) The automobile classification plan section of the bill was rewritten to limit the number and types of classifications available to the Bureau;

(2) The General Assembly placed a cap of 6% per year for two years on general rate level increases for private passenger liability, medical payments, uninsured motorists, and physical damage coverages; and

(3) A termination clause providing that the bill would expire unless re-enacted by September 1, 1980, was attached to the legislation.

Rate Regulation and the Reinsurance Facility Under House Bill 658

Under the provisions of H. B. 658, insurance is divided into "essential" and "nonessential" categories. Essential lines of insurance include automobile liability, theft, and physical damage, workmen's compensation, and residential property and fire insurance. Nonessential lines include commercial lines of certain fire and property, casualty, and inland marine insurance, among others. Companies writing essential lines are required to belong to the North Carolina Rate Bureau (which replaced the three rate bureaus that operated under the prior approval system) and to adhere to the Bureau rates. Therefore, price competition is not allowed in the essential lines, except for rate deviations and premium dividends. Rate deviations were not permitted under the prior approval law. Under the provisions of H. B. 658, the insurance

companies or the Rate Bureau do not need the Commissioner's approval before new rates can be put into effect, but file the necessary papers to notify the Commissioner of the change. The rates for nonessential lines take effect on the date specified in the filing, and rates for essential lines take effect on a date specified by the Rate Bureau, following a 90-day waiting period. If the Commissioner contends that the filing does not comply with the statutory rate standards he must notify the Bureau or companies to that effect and call a hearing. If the Commissioner disapproves the filing he must state in an order to what extent the filing is improper. The rates may take effect only if the Commissioner's order is appealed, and any disputed amounts (purportedly excessive premiums) are deposited in a special escrow account pending the appea If the court holds for the Commissioner, the companies or Bureau must refund excess premiums, with interest, to the policyholders who paid them.

The North Carolina Motor Vehicle Reinsurance Facility, created in 1973 by the General Assembly to replace the Assigned Risk Plan, is basically a pool that insures bad driving risks that companies do not want to individually insure. All insurance companies licensed to write automobile insurance in the State are required to participate in the Facility. Under the old law the participating companies could not transfer more than 50% of their risks to the Facility, had to share Facility losses, and could not charge higher rates for automobile liability policies ceded to the Facility. House Bill 658

changed all of that by eliminating the 50% limitation on cessions, by permitting higher rates or surcharges to recover losses of the Facility, and by providing for distribution of Facility gains to policyholders reinsured by the Facility. The apparent intent behind the new provisions is to make the Facility self-sustaining, whereas under the old system the insurance industry in effect subsidized the Facility by absorbing its losses.

COMMITTEE PROCEEDINGS

Committee Meetings

The Insurance Laws Study Committee held its first meeting on December 14, 1977, at the State Legislative Building.

Representative Campbell briefly discussed the development of North Carolina's regulation of the insurance industry over the years. He said that he felt that the Committee members recognized their responsibility to keep abreast of decisions of the Commissioner of Insurance and to make needed changes in the statutes involving this tremendous consumer industry. He noted that House Bill 658 was enacted by the 1977 General Assembly to lower premiums for the young driver, etc., and to define the duties of the office of the Commissioner. He expressed the view that the matter of product liability insurance, along with other issues, needed to be looked

into, and that the results of enacting House Bill 658 should be followed, possibly by scheduling meetings across the State to hear from interested parties.

Commissioner of Insurance John Randolph Ingram then reported to the Committee on the effects of House Bill 658 on his Department and made several requests for Committee action. He provided a list of companies filing rate increases and statistics on territorial rate level changes of risks ceded to the Reinsurance Facility. Senator Totherow asked the Commissioner to provide the Committee with a list of rate increases requested by those in the ceded risk and to notify each member of the Committee when rate hearings are to be held.

Senator Totherow opened the afternoon session of the meeting and recognized Mr. L. Merritt Jones, Jr., President of the Independent Insurance Agents of North Carolina, Inc., for a statement. Mr. Jones updated the Committee on the activities of the Reinsurance Facility in developing a designated agent program in its Plan of Operation and the activities of his association in training insurance agency owners and employees to apply the new automobile insurance classification plan. He also stated that in the short time since the effective date of House Bill 658 there had been improvement in the voluntary market, especially in the commercial lines. During the question and answer period following Mr. Jones' statement, it was decided that a list of companies operating in North Carolina under rate deviations on essential lines should be requested from the Commissioner.

Mr. S. Dewey Keesler, President of the Carolinas Association of Mutual Insurance Agents, Inc., spoke next. Mr. Keesler felt that product liability insurance was a coming crisis. He noted that prior to the 1977 session his association had favored establishment of a commission similar in set-up to the Utilities Commission to hear rate requests; that the Independent Insurance Agents of North Carolina, Inc., had favored a file and use plan; and that the industry wanted an open system allowing competition to determine rates. Everyone compromised, and the result was House Bill 658. He did not feel that HB 658 had affected the role of the agent, which was to advise his clients and get the best possible deal for them. He noted that there had been some changes in the insurance marketplace and that companies seemed to be more optimistic. He expressed disappointment that Commissioner Ingram had turned down the rate increase for Workmen's Compensation and felt that sooner or later companies would quit writing this insurance if satisfactory increases were not allowed. His view that companies would dump underage male drivers into the Reinsurance Facility caused concern among Committee members that some companies were not operating in good faith. Mr. Keesler noted that if enough of the large companies took more than their share of underage male drivers, they would sooner or later stop writing young driver insurance and there would be a resulting domino effect.

After Mr. Keesler's statement the Committee briefly reviewed the statuses of the N. C. Health Care Excess Liability Fund,

self-insurance for N. C. Memorial Hospital and UNC Medical School, Medical Liability Mutual of N. C., Inc., insurance bills that could be considered during the 1978 Session without the need for an authorizing joint resolution, and rate filings under HB 658 between September 1 and November 30, 1977.

The next Committee meeting was held on January 24, 1978, at the State Legislative Building. The following speakers addressed the impact and effects of implementation of HB 658:

Bernard H. Parker, Vice President-Regional Manager of Nationwide Insurance Companies and Chairman of the Governing Committee of the North Carolina Rate Bureau;

Paul L. Mize, General Manager, North Carolina Rate Bureau, and Manager, North Carolina Reinsurance Facility; and

Thomas S. Carpenter, General Manager of Aetna Life and Casualty and Chairman of the Board of Governors of the North Carolina Reinsurance Facility.

All three spokesmen indicated that the insurance industry was making "every reasonable effort" to comply with the spirit and lette of HB 658, although they generally agreed that the 6% cap on annual increases of automobile insurance lines would mean continuation of deficient rates in those lines.

Mr. Parker stated that the enactment of HB 658 did not solve all of the automobile insurance problems, and that current figures indicated the need for an automobile liability rate increase of 24%.

Mr. Carpenter indicated that if the drivers insured through the Reinsurance Facility were rated solely on their own loss experience, a rate increase of 65% would be in order for that group alone.

During a question and answer period, the spokesmen stated that they saw no indications that the percentage of insureds in the Reinsurance Facility would be declining in the near future; in fact, Mr. Mize told the Committee that the number of policies ceded to the Facility had been increasing every month since the Facility's creation in 1973.

Representative DeRamus asked Mr. Mize if he could provide information on how North Carolina insurance rates, particularly for automobile liability and collision, compared with other states, since Mr. Ingram had testified in Washington, D. C., that North Carolina had the lowest rates in the country. Mr. Mize replied that all companies in North Carolina used the same rates and a comparison could be drawn between companies, but that outside the State all companies did not use the same rates. He felt that historically North Carolina had low rates. Mr. William L. Suttle, of the American Insurance Association, said that the Insurance Services Office published on a quarterly basis rates for certain typical operators of motor vehicles and they would give a comparison of states that they did business in. He agreed to provide this information to the Committee.

Senator Totherow requested that Mr. Carpenter provide the Committee with documentation of the $78,000,000 operating loss

sustained by the Facility since October 9, 1973, as reported in his statement. Senator Totherow also asked Mr. Carpenter what would happen to the availability of insurance over the next two years if HB 658 created a $70 million shortfall, and Mr. Carpenter noted that for years in North Carolina the personal lines insurance market has been subsidized by the commercial lines market, and that under the new rate law premium changes and form changes were being made available immediately to commercial insurance buyers. He felt that there had been little to attract carriers to participate in the automobile liability insurance market in recent years, and that many of these companies would obviously be more aggressive in the commercial lines area than many of the other major writers would be able to. He noted that because of this, the companies that have been writing their share of the automobile insurance market would have a burden to bear until the automobile rates approached a reasonable amount over the next two years. He did feel that because companies could see better days ahead they would be more receptive to taking their share of this loss.

In response to questions by Senator Jordan concerning the designated agent program, Mr. Carpenter pointed out that many people in the State, including agents, wanted the Facility to fail and wanted a return to the old Assigned Risk program. He felt that the agent program was extremely liberal, and said that the Board of Governors was committed to making the Facility plan work, despite the widespread unpopularity of the concept. He also pointed out that

if correct procedure as set forth in HB 658 were followed, a person buying insurance from a designated agent would not pay higher rates simply because he purchased insurance from a designated agent. Mr. Mize indicated that prior to the passage of HB 658 there were 27 designated agents under the "temporary agents" program voluntarily set up in 1976; and now there were 187 designated agents with 14 insurance companies that had volunteered to serve as designated carriers. Both Mr. Mize and Mr. Carpenter indicated they knew of no agents who qualified under the new law and who had not been designated to a carrier.

Mr. Suttle commented that the 190% increase referred to by Commissioner Ingram at the previous meeting pertained to an all-risk Inland Marine floater on single items of jewelry and furs worth more than $25,000. This policy was not available before this filing was made and the last rate filing in this category was made 34 years ago. He said further information was being compiled concerning rate increases and would be shared with the Committee. Mr. Suttle also agreed to furnish the Virginia Bureau of Insurance report issued in January, 1978, and the full report on the Massachusetts order reverting from open rates to rates set by the Massachusetts Commissioner of Insurance.

After some discussion, it was agreed that Senator Totherow and Representative Campbell would set a date for the next meeting and notify members. Pending such notification, it was agreed that the

staff would keep the members updated on the activities of the industry, agents, and the Department of Insurance in the implementation of HB 658. It was noted that evidence of the success or failure of the provisions of HB 658 would be slow in coming due to the relative shortness of the existence of the new law.

During the ensuing months in 1978 the Committee was kept informed on the status of insurance rate regulation in the State, including essential lines rate and classification plan filings with the Commissioner, the hearings on those filings held by the Department of Insurance, the activities of the Rate Bureau and the Reinsurance Facility, and the progress being made in the nonessential lines. Because of this constant flow of information, and because there was no indication from this information that any Committee action was necessary, the Committee did not hold another meeting until November. It should also be noted that during much of this interim period the Commissioner of Insurance was a candidate for the United States Senate; and the Committee was of the opinion that unles a meeting in Raleigh or elsewhere was absolutely necessary, there was no logic in providing a political forum for the Commissioner or for his opponents during the primary and general election campaigns.

The next Committee meeting was held on November 15, 1978, at the State Legislative Building. The first order of business was discussion of the possibility of holding hearings in the western,

central, and eastern parts of the State in order to hear from the public about the effects of HB 658 on the insurance marketplace. The Committee eventually decided to hold public hearings in the cities of Charlotte and Asheville on December 4, 1978, and in the city of Greenville on December 5, 1978. By chartering a State-owned airplane, the total cost and amount of time required to conduct all three hearings would be minimized. The Committee also decided to extend invitations to members of the General Assembly districts surrounding those general areas and to members of the Governor's Insurance Advisory Committee. Press releases describing the subject matter of the hearings and detailing the hearing schedules were subsequently sent to the wire services and selected newspapers.

The Committee was then updated on essential lines filings and hearings. Mr. Vance Kinlaw of the Department of Insurance discussed the most recent action on worker's compensation insurance, and there was also discussion about the Commissioner's latest orders concerning the automobile classification plan. Mr. J. Ruffin Bailey informed the Committee that to his knowledge there had been no complaints about availability or affordability of nonessential lines.

There was concern expressed by Committee members over the fact that HB 658 could have no effect on the time taken by the appellate courts to render opinions on contested insurance rate cases; it was conceded, however, that the General Assembly has no power under the Constitution of North Carolina to dictate the practice and procedure

of the appellate courts. Article IV, Section 13(2) vests that authority exclusively in the Supreme Court of North Carolina.

During the afternoon session the members discussed the subjects of no-fault automobile insurance, compulsory automobile liability insurance, and product liability insurance. The Committee was informed about laws passed in Kentucky, Michigan, and Florida related to no-fault insurance.

One of the final orders of business was the designation of a subcommittee that would meet with the Commissioner of Insurance to discuss HB 658 with the hope of surmounting some of the impasses that had been reached between the Commissioner and the insurance industry.

Meeting With The Commissioner of Insurance

On November 28, 1978, a subcommittee consisting of Representatives Campbell, Ellis, and Seymour met with Commissioner Ingram in the Commissioner's offices. The Commissioner outlined to the subcommittee members the change in the rate regulation statutes he would like to see. Among them are:

1. Elimination of the Reinsurance Facility surcharge;

2. Use of the point system currently employed by the Division of Motor Vehicles rather than use of the point system in the automobile classification plan;

3. Elimination of the Rate Bureau function of filing uniform rates for essential lines and provision for individual filings by insurers, whereby the Commissioner could compile North Carolina data and set an average rate for each essential insurance line, with allowance for upward and downward deviations;

4. More precise statutory guidelines for establishing and approving insurance rates;

5. More protection for agents, including a provision that would enable the Commissioner, as an "aggrieved party", to participate in appeals from decisions of the Reinsurance Facility affecting agents;

6. A motorists' bill of rights that would address the administration and adjustment of policyholder claims; and

7. Inclusion of the consideration of investment income from prepaid premiums in the setting and approval of rates.

The Commissioner added that his Department needs additional funds to hire an actuary or in the alternative, to pay for actuarial consultant fees; that the age and sex discrimination statutes are being nullified by the use of "consent to rate" provisions in the statutes (whereby the insured agrees, with the Commissioner's approval, to pay a rate for insurance higher than the maximum rate allowed by law); that the Reinsurance Facility surcharge authorized by HB 658 has created a residual market, which is not in the public interest; and that only drivers with motor vehicle points should be surcharged.

Public Hearings

On December 4, 1978, the Committee held public hearings at 2:00 p.m. at the Education Center in Charlotte, North Carolina, and at 7:30 p.m. at the Buncombe County Courthouse in Asheville, North Carolina. On December 5, 1978, the Committee held a public hearing at 10:00 a.m. at the Willis Building on the East Carolina University Campus in Greenville. Attendance by the general public was good despite insufficient public notice on the part of the

press and inclement weather at all three locations. The Commissioner and some of his staff attended all three hearings as did industry representatives and a good number of independent agents.

As indicated in the press release and the notices sent to General Assembly members, the issues to be discussed at the hearings were the effects of HB 658 since its effective date and the alternatives for the 1979 General Assembly, which will have before it the task of considering the expiration dates of (1) the six percent annual limit on automobile insurance rate increases (July 1, 1979) and (2) HB 658 in its entirety (September 1, 1980).

FINDINGS

Nonessential Lines

As defined by HB 658, nonessential lines consist of all property and casualty coverages other than those designated as essential and filed by the Rate Bureau, and other than ocean marine, title, and mortgage guaranty insurances. Examples of nonessential lines are: (1) commercial automobile liability, physical damage and theft, medical payments, and uninsured motorists coverages; (2) residential real property with more than four housing units (and contents); (3) commercial real property; (4) professional liability coverages (e.g., malpractice); (5) commercial crime coverages; (6) employers dishonesty; (7) bonds; (8) crop hail coverages; (9) owners, landlords, and tenants-premises; and (10) operation liability for commercial properties. The term "nonessential" is used to indicate

that these coverages are not essential in the day-to-day lives of every North Carolinian.

According to the testimony received by the Committee at the public hearings, the fact that companies are no longer required by law to be members of an industry bureau for the purpose of setting rates on commercial lines has worked to the advantage of buyers of commercial insurance; that there is price competition, a broader range of coverages, and greater availability of insurance in the commercial lines. A member and representative of the Carolinas Association of Professional Insurance Agents, Inc. (which association represents some 2,000 licensed fire and casualty insurance agents in North Carolina) stated that a recent survey of that association's members indicated that 91% of its agents have noticed an increase in competition among the fire and casualty companies they represent in the selling of commercial lines insurance. Other testimony of agents follows verbatim:

> "For one thing the open rating competition in commercial lines made possible by House Bill 658 permitted companies to price and compete for most commercial business, both mercantile and industrial. This has resulted in a very active competitive environment and has brought lower costs to the purchasers of commercial lines insurance, improved coverage and protection, and today there is good market availability in these lines, along with maximum competitive pricing.

"Prior to the passage of HB 658, a large percentage of the non-essential coverage for commercial accounts in many cases were not available except through the excess or brokerage markets. In many cases we had to go to these markets in order to find coverage and in some cases it was priced so high that the client elected to operate without insurance. During the past 12 months there has been a turn around, in that many companies are now offering realistic quotations for these coverages.

"As an independent insurance agent whose day-to-day activities bring me in contact with many persons seeking to purchase some form of commercial insurance, it is apparent to me that insurance companies are more agressively seeking business in these areas since the enactment of HB 658.

"Many other states have for years operated under some type of file and use rating law and have permitted companies to file their own rates based on their own experience. Companies are able to introduce innovative programs into the marketplace and thus the insuring public has been able to take advantage of a number of options available to them.

"One of the most important elements in stability of an insurance company is the "mix of business." It is essential that companies write a reasonable amount of commercial business along with personal lines, and agents must be able

to offer a full line of commercial insurance to all of their clients. The availability of commercial insurance is essential to the orderly growth of our communities, and certainly HB 658 and its file and use concept has improved the markets for commercial insurance.

"North Carolina has been far behind most other states in its ability to offer new coverages, and insureds in North Carolina have not had the advantage of these new coverages because our old system required companies to file in concert through the old bureau. During the past year, since the enactment of HB 658, companies have begun to file their own individual programs which for years had only been available in other states."

It therefore appears that competitive rating in the nonessential lines has eased the pressure for engaging in restrictive underwriting practices that were common under the prior approval system.

Although innovation, competition, availability, and affordability seem to be permeating the nonessential insurance marketplace, it is too soon to determine if the companies writing these lines are generating a reasonable profit or loss. Sufficient experience figures and actuarial data have not yet been accumulated. The provisions of HB 658 under which nonessential lines rates are established have been in effect less than one and one-half years. Many three-year policies in the commercial lines area will not

even come up for renewal quotations until the current expiration date of HB 658.

Essential Lines

The following is a report on the filings of rate revisions and classification plans for essential lines made by the North Carolina Rate Bureau under HB 658.

Automobile Insurance Rate Revisions:

A proposal for revised rates for bodily injury and property damage liability, medical payments, and physical damage insurance for non-fleet private passenger automobiles was submitted to the Commissioner on November 29, 1977. The experience data included in the filing indicated the need for statewide average rate level increases of 24.4% for liability (including medical payments) and 21.6% for physical damage, averaging 23.2% for all coverages. In accordance with the provisions of G.S. 58-124.26, which provides that average rate level increases for such coverages may not exceed 6% on or prior to July 1, 1978, the proposed rate level increases were so limited. The filing included proposals that rates for risks ceded to the North Carolina Reinsurance Facility be 10% higher than the rates for risks retained voluntarily, and that territorial rate differences be established but limited to ±5% depending upon the individual territory experience compared to state wide average.

On December 29, 1977, the Commissioner issued a notice setting a public hearing on January 30, 1978 for the purpose of considering the Rate Bureau's November 29, 1977 rate filing. Following public hearing sessions on January 10 and on February 9, 10, and 15, 1978, the Commissioner on February 27, 1978 issued a Decision and Order disapproving the filing and allowing the Rate Bureau 60 days in which to submit an amended filing consistent with the Findings of Fact and Conclusions of Law set forth in the Decision. The Rate Bureau joined by eight of its member companies appealed the Commissioner's Order, and the matter is pending before the North Carolina Court of Appeals.

As provided in G.S. 58-124.22(b) the Rate Bureau elected to implement the revised rates effective April 1, 1978. As a result of the implementation of the revised rates over the disapproval Order of the Commissioner, member companies were required to establish premium escrow accounts as provided by law.

Another proposed revision of premium rates for bodily injury and property damage liability, medical payments, and physical damage insurance for non-fleet private passenger automobiles was filed June 30, 1978. Statewide average rate level changes indicated by the experience were increases of 17.9% for liability (including medical payments) and 10.8% for physical damage, averaging 15.5% overall. In accordance with the provisions of G.S. 58-124.26, the proposed overall rate level change was limited to an increase of

5.6%, including a 5.6% increase in the rate level for liability and medical payments coverages and a 5.6% increase in the current rate level for physical damage coverages. On July 28, the Commissioner issued notice scheduling a public hearing for August 28, 1978 The hearing was held, and the rate revision was subsequently disapproved by the Commissioner on September 27, 1978. The Rate Bureau appealed the order and implemented the increase effective December 1, 1978, subject to the escrow provisions.

Automobile Insurance Classification Plan:

In accordance with the provisions of HB 658, the Rate Bureau on September 1, 1977, filed with the Commissioner revised classification and subclassification plans for non-fleet private passenger cars and motorcycles. As required by law, the revised classification plan established four primary classifications for non-fleet private passenger automobiles; eliminated age or sex of operator as rating criteria, provided for premium surcharges for operators having less than two years driving experience as licensed drivers, and provided for surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations.

After a hearing, the Commissioner issued a Decision and Order dated November 10, 1977, approving the filed classification plan, and ordering that the plan be implemented effective December 1, 1977

In his Decision the Commissioner ordered that the Insurance Department may upon 30 days notice after February 1, 1978 order a hearing at which time ". . . there may be consideration of the North Carolina Division of Motor Vehicles point system as a basis for the implementation of the revised subclassification or Safe Driver Insurance Plan and a consideration of the differentials, discounts, or surcharges as made a part of the revised classification plan and subclassification plan as filed and approved, specifically in regards to farm use discounts, multi-car discounts, inexperienced operator surcharges on principal and occasional operators, driver training discounts and other matters contained in the Commissioner's Notice of Public Hearing dated September 30, 1977."

On March 6, 1978, the Commissioner issued a notice setting a public hearing on April 10, 1978, to review the revised classification plan. Following an additional session of the public hearing on May 4, 1978, the Commissioner issued Notice of Continuance notifying the Rate Bureau that hearings on plan would be continued until further notice. The final hearing was held on October 18, 1978. On October 30, 1978, the Commissioner issued two orders that would amend the revised classification plan to incorporate the considerations in his Decision and Order of November 10, 1977. These two orders were appealed by the Rate Bureau on November 29, 1978.

Property Insurance/Homeowner Program Rate Revision:

On June 30, 1978 the Rate Bureau filed with the Commissioner a premium level revision for the Homeowners Program, proposing

statewide average increases in premium level of 8.3% for Forms 1, 2, 3 and 5 and 30.0% for Form 4, averaging 9.1% based upon experience for five years ended December 31, 1976.

The filing also proposed changes based upon experience review in the Amount of Insurance, Form, and Protection/Construction Relativities, as well as rate changes by territory. The proposed effective date was December 1, 1978.

On July 28, the Commissioner issued a Notice of Public Hearing to be held August 30, 1978. Pursuant to the Notice of Public Hearing, the Rate Bureau furnished the Commissioner additional information and additional documents on August 23, 1978. The public hearing was held and concluded on August 30 as scheduled.

On September 21, 1978, the Commissioner disapproved the filing of June 30, 1978. The Rate Bureau appealed the disapproval and implemented the average 9.1% rate increase effective January 1, 1979, subject to the escrow provisions.

Workers' Compensation Insurance Rate Revisions:

On September 9, 1977, the Rate Bureau filed with the Commissione a proposal to increase workers' compensation insurance rates an average of 28.4%. North Carolina workers' compensation insurance rates had last been changed effective in December, 1973, as the result of a filing submitted in September, 1972, by the Compensation Rating and Inspection Bureau of North Carolina. Subsequent filings by that Bureau had been either ignored by the Commissioner or were mired in litigation. In the meantime, benefit levels and medical fee schedules had been increased dramatically.

The filing submitted by the Bureau on September 9, 1977, called for average rate level increases averaging 31.2% for manufacturing classifications, 28.3% for contracting classifications and 25.4% for all other classifications.

On December 7, 1977, after a series of public hearings which had begun on November 9, the Commissioner issued an Order disapproving the filing.

The Rate Bureau, joined by 25 of its member companies, appealed the Order, and the matter remains pending before the North Carolina Court of Appeals.

As permitted under the provisions of G.S. 58-124.22(b), the Rate Bureau elected to implement the disapproved rates applicable to all new and renewal policies having a normal anniversary rating date on or after January 1, 1978, with such rates applicable effective as of February 1, 1978. As a result of the implementation of the revised rates over the disapproval order of the Commissioner, member companies were required to establish premium escrow accounts in accordance with law.

On October 12, 1978 the Rate Bureau filed with the Commissioner a proposal to increase Workers' Compensation insurance rates an average of 19.8% which is in addition to the 28.4% increase filed on September 9, 1977, which was disapproved on December 7, 1977. A hearing was held on December 13, 1978 on the most recent Workers' Compensation filing, and the Commissioner issued an order on January 9, 1979, disapproving the filing.

According to the testimony received by the Committee, the increases in Workers' Compensation benefit levels and medical fee costs resulting from the legislation by the General Assembly, the action of the Industrial Commission, and a worsening loss experience in North Carolina have resulted in proposed increases in the overall level of Workers' Compensation insurance rates.

Workers' Compensation Uninsured Risk Assignment Plan:

In accordance with the provisions of the North Carolina Uninsured Risk Assignment Plan 11,846 risks were assigned by the Bureau during the year ended August 31, 1978. During this year there were 5,687 new assignments, 5,911 renewals and 248 risks extended North Carolina coverage by Supplementary Application.

The following is a report on the activities of the North Carolina Reinsurance Facility concerning rates, classification plans, designated agents, and other changes implemented under the provisions of HB 658.

Rates and Classification Forms:

The Board of Governors authorized the North Carolina Rate Bureau to provide rating services for the Facility in connection with non-fleet private passenger automobile insurance business ceded to the Facility. With respect to commercial automobile business ceded to the Facility, the Board of Governors requested Insurance Services Office to act as an advisory organization.

The Bureau filed and obtained approval effective December 1, 1977, on behalf of the Facility, of a revised classification plan

for non-fleet private passenger automobile risks ceded to the Facility.

On November 29, 1977, the Rate Bureau submitted on behalf of the Facility a filing proposing revised rates for bodily injury and property damage liability and medical payments coverages for non-fleet private passenger automobiles ceded to the Facility. The filing included a proposal that rates for risks ceded to the Reinsurance Facility be 10% higher than the rates for risks retained voluntarily. Following several sessions of a public hearing, the Commissioner on February 27, 1978 issued an Order disapproving the proposed rates. The Board of Governors voted to appeal the Commissioner's Order and to implement average rate level changes of -7.9% bodily injury, +49.5% property damage, +0.3% medical payments, averaging +13.9% overall. The Reinsurance Facility's appeal remains pending before the North Carolina Court of Appeals.

The Rate Bureau filed on behalf of the Reinsurance Facility on June 30, 1978, a proposed revision of premium rates for bodily injury and property damage liability and medical payments coverages for non-fleet private passenger automobiles. Although indicated changes involved the need for overall statewide rate level increases averaging +36.2%, the proposed rate level increases were limited to 5.6% on all coverages in accordance with G.S. 58-124.26. On September 27, 1978, the Commissioner issued an Order disapproving the June 30, 1978, filing. The Board of Governors voted to appeal the Order and to implement the increase effective December 1, 1978,

subject to the escrow provisions. This appeal is also pending judicial review.

Facility Operations Revisions:

House Bill 658 made substantial changes in the Facility law and necessitated major revisions in the Facility's Plan of Operation and Rules of Operation. The most significant changes related to designated agents, the provision for appointment of Facility agents, recoupment, the rating and classifying of ceded risks, the elimination of the 50% cession limit, and the investment income provision.

Following adoption by member companies numerous changes in the Facility's Plan of Operation were filed with the Commissioner as required by law. Some of the proposed changes were approved by the Commissioner as filed by the Facility; several of the proposed changes were disapproved by the Commissioner, revised by the Facility, refiled by the Facility and subsequently approved by the Commissioner; and three proposed changes have not been approved by the Commissioner. The Commissioner's Orders disapproving proposed amendments dealing with company participation in the Facility's results, dealing with the appointment of designated agents, and relating to the accounting method to be utilized by the Facility were appealed by the Facility to the Wake County Superior Court. With respect to the proposed changes relating to the Facility's accounting procedures and the appointment of designated agents, the Facility obtained court orders allowing the proposed changes to be implemented pending the outcome of the appeals.

Several changes in and additions to the Rules of Operation have become effective. These include (1) changes designed to track the changes in the Facility's Plan of Operation required by House Bills 285 and 658 and Senate Bill 144; (2) a provision requiring member companies to notify policyholders of ceded status; and (3) a provision allowing a risk to be removed from the Facility and retained by the carrier on a voluntary basis.

Designated Agents Program:

Under the provision of HB 658, it became necessary to establish new procedures relative to the appointment of designated agents. The proposed changes in the Plan of Operation relating to designated agents, recommended by the Board of Governors and adopted by member companies, were approved by the Commissioner on September 6, 1977, "until such time as a hearing thereon is concluded by Order." The Commissioner's hearing on the amendments was held on September 26, 1977, and on that date the Commissioner issued an Order calling for changes. That Order provided that the prior Order dated September 6, 1977, approving the amendments would continue in full force and effect pending implementation or judicial review of the September 26, 1977, Order. The Commissioner's Order of September 26, 1977, was appealed to Wake County Superior Court. The appeal remains pending.

In September, 1977, on the basis of the Commissioner's conditional approval of the proposed changes, the Facility contracted with fourteen member companies to appoint and license designated agents.

This contract with member companies for appointment of designated agents terminated on September 30, 1978. Pursuant to its provisions this contract was renewable on an annual basis upon terms agreeable to both parties. Four companies decided to withdraw from participation in the Designated Carrier Program and terminated the contract. Effective on October 1, 1978, after determining that no other ceding member companies were interested in becoming designated carriers, the Facility executed new contracts with the remaining ten member companies serving as designated carriers. Those agents which were assigned to the four companies withdrawing from participation in the program were reassigned to other companies.

Since HB 658 became effective on September 1, 1977 the Facility has received 244 agent applications for a designated carrier from the Department of Insurance. Sixty-two of those applications were received subsequent to September 30, 1977. There were 192 active designated agents as of December 1, 1978.

The designated carriers provisions of HB 658 separated the ceded business written at Facility and non-Facility rates, but there was no Facility rate differential until April 1, 1978. Because of this the number of designated carrier exposures eligible for non-Facility rates should appear small in relation to actual distributio when the data for the fiscal year ending June 30, 1978, becomes available in May, 1979.

The Facility Board of Governors made 120 assignments of agents to designated carriers in 1973 prior to the operation of the Facility. The number was reduced to 35 by April 30, 1975, and further reduced to 28 by September 30, 1976. In an effort to temporarily alleviate the market problems faced by agents who had lost their automobile liability insurance market and who could not qualify for designated carrier assignment (because of inability to establish for existence of a consumer market need as required by law), the plan of operation was changed in June 1976 (and approved by the Commissioner) to provide for voluntary appointments of qualified agents for a temporary period expiring on June 30, 1977; but the temporary agent program was extended for an additional three months, ending September 30, 1977. At the end of this program there were 27 temporary agents.

Compulsory Automobile Liability Insurance

In 1947 the General Assembly passed the Motor Vehicle Safety and Financial Responsibility Act to increase the number of insured motorists in the State with the hope that victims of automobile accidents would be compensated more than before. The law provided that the licenses of persons who failed to pay for judgments against them would be suspended and not reinstated until those persons furnished proof of financial responsibility, and also provided that persons whose licenses were revoked or suspended because of traffic violations were required to furnish proof before their licenses could be reinstated. The law did not work as expected

presumably due to the fact that it provided only the possibility that a motorist would be forced to buy insurance in the future. This offered very little inducement to most motorists for it was estimated in 1952 that only 35% of the licensed drivers in the State carried liability insurance. In 1953 the General Assembly repealed the 1947 law and enacted a similar law with more teeth. Unlike the 1947 law, the 1953 law made the financial responsibility provisions applicable to the first accident; and anyone involved in an accident and uninsured was required to deposit security with the Department of Motor Vehicles that was considered sufficient to cover possible judgments from that accident. The alternative to that was license suspension. In 1957 the General Assembly added to the 1953 law by requiring proof of financial responsibility from owners of automobiles before they could register their vehicles. The obvious intent behind the 1957 law was to provide protection to the public by requiring motorists to continuously maintain financial responsibility, and the 1957 Act made it a crime to fail to do so. North Carolina today operates under the provisions of both the 1953 and 1957 Acts.

The Committee decided to examine the effects of the possible repeal of these acts, for it had been suggested that voluntary financial responsibility laws might alleviate the underwriting losses that have been experienced by automobile insurers. Most insurance companies never desired or supported compulsory liability

coverages, mainly because a voluntary market permits underwriters to select their insurance risks that statistically should return a reasonable profit during the underwriting cycle.

During the Committee's study, however, there was no clamor for the repeal of North Carolina's financial responsibility laws. The Committee believes that such repeal would not be in the public interest and that the purpose behind the laws is as valid as ever.

No-fault Automobile Insurance

The "fault" system, where one's right to receive compensation is conditioned on the fault of another motorist, has been criticized in some states for (1) the expenses of investigation, administration, and litigation, (2) the delay between the times of injury and compensation, and (3) the fact that often small claims are overcompensated and serious claims are undercompensated. Critics of the fault system have claimed that the costs absorbed by that system would be better used for compensating persons under a no-fault system, that ultimately the expenses of providing protection to policyholders under a no-fault system would be less, and the result would be lower premiums for more adequate protection. Under a no-fault system, the motorist would purchase insurance for his own interests rather than for the benefits of others who might be injured through his negligence. The kind of protection purchased by the motorist would be similar to that of hospital and fire insurance, where the policyholder is the direct beneficiary of the policy regardless of fault.

Most states that have enacted no-fault insurance have modified the pure no-fault concept by placing restrictions on the types of losses to be compensated and the benefits to be paid. These restrictions have the effect of reserving the use of the fault system for losses that exceed the no-fault "thresholds". Critics of the no-fault systems in existence claim that many of these restrictions defeat the purpose of no-fault insurance because many losses are beyond the threshold amounts, and the injured persons resort to the courts to obtain judgments for the excess amounts.

Proponents of no-fault automobile insurance have been unsuccessful in the past in their attempts to pass such a law in North Carolina. In most states where no-fault has been tried, the purpose of no-fault has been to mitigate the impact of litigation on claims costs. In North Carolina, however, claims litigation costs represent a substantially smaller portion of the companies' settlement expenses. The Committee believes that the passage of no-fault legislation in North Carolina would not at this time offer any benefits to either the motorists of this State or the companies that insure them.

Appellate Review of Contested Rate Filings

One of the criticisms of the prior approval system, as mentioned earlier in this report, was that an inordinate amount of time elapsed between the filing of rates and supporting data and the final adjudication of appeals taken from the Commissioner's disapproval orders.

The rates could not be changed unless and until the Court of Appeals or Supreme Court ruled for the bureau that filed the rates. In almost every case, some of which lasted up to two years, there was much doubt as to the statistical relevance and adequacy of the supporting data by the time the rates were put into effect.

One of the most significant changes made by HB 658 is that rate revisions can be implemented in spite of the Commissioner's disapproval <u>if</u> the Rate Bureau or company filing the revision appeals the Commissioner's order and places the amount deemed by the Commissioner to be excessive in an escrow fund. If the courts rule in favor of the Commissioner, the amounts in escrow must be refunded pro rata to the policyholders who paid the excessive amounts, with interest at the prime rate in existence on the date the rates were put into effect. If, on the other hand, the courts rule in favor of the Bureau or company, the money is available for their use.

The purposes behind this provision were (1) to allow the companies the pricing flexibility to realize appropriate rate levels that reasonably reflect underlying costs; (2) to protect the policyholders from unwarranted upward rate revisions; and (3) to discourage the Rate Bureau and companies from filing rate revisions in arbitrary and capricious manners.

House Bill 658, did not, and the General Assembly cannot, do anything to expedite judicial review once an appeal is taken to the Court of Appeals. Article IV, Section 13(2) of the Constitution

of North Carolina states:

> "The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division."

CONSIDERATIONS

It is important to note that all businesses have their economic cycles, but that of insurance is almost always out-of-phase with the rest. When product and service prices are on the increase, insurance prices are generally stable and insurance profits are on the decline. When the other product and service prices increase at slower and slower rates, insurance data begins to indicate that the insurance underlying costs have been out-running the insurance rates. Insurers then realize they need to increase their rates, and put them into effect (or attempt to, depending on the method of rate regulation), with improved profits the result. The time required to process claims and collect and analyze claims data is responsible for the delay between price increases in the general economy and in the insurance industry. When the insurance industry raises rates during periods of relative economic stability, the regulator and the general public have understandable problems in accepting the legitimacy of insurance rate revision requests and evaluating the supporting data.

This is especially important due to the fact that HB 658 went into effect during a period of unprecedented inflation; and even more so because many of the services and products for which casualty and property insurers pay claims have increased at much higher rates than the Consumer Price Index. For example, during the winter of 1974-75, the annual inflation rates for auto repairs and maintenance was 14.5%, house maintenance and repairs rose to 16.8%, house furnishings reached 15%, physicians' fees attained 14%, semi-private hospital room rates reached 19.2%, and residential construction was at 10.3%. Nationwide the property and casualty insurance industry experienced its worst underwriting losses ever in 1974-75. These unstable economic trends coupled with other events and factors since the early 1970's that have adversely affected the nation's economy (e.g., OPEC oil embargo and price increases, the shift from war-time to peacetime economy, unstable weather patterns, and unprecedented inflation rates) have made any kind of meaningful, analytical comparison of the recent insurance underwriting cycles with any other economic period virtually impossible, especially measuring profit adequacy.

Under the prior approval system of rate regulation, if rate increases are not granted the insurance industry can reduce its exposure to losses and rising underlying costs only by restrictive underwriting; that is, selecting only good risks, limiting policy

coverages in certain situations, ceding bad risks to reinsurance pools, changing policy forms, etc. This was the case in North Carolina until recently in the commercial lines of insurance. Because there were few increases in many lines of insurance prior to the implementation of HB 658, it is difficult if not unwise to arrive at definite conclusions at this time about any direct cause and effect relationship between the method of insurance rate regulation and increases in premium levels.

It is extremely important to note the fact that HB 658 has been in effect only since September 1, 1977, that the new automobile classification plan has been in effect only since December 1, 1977, and, as indicated earlier in this report, most of the rate revisions in the essential lines have been implemented only within the last year. These facts, coupled with the facts that the essential lines insurers must use a uniform bureau rate for each line and that there exists a cap on automobile insurance lines, make any meaningful economic analysis of the essential lines provisions of HB 658 virtually impossible at this time. The task of determining whether or not companies have generated any reasonable profits is even more difficult considering the length of underwriting cycles for various insurance lines (the minimum length of time in which claims data becomes statistically reliable), the delay in the adjudication of contested rate cases, and the statewide and nationwide economic trends. Until the N. C. Court of Appeals and possibly the N. C.

Supreme Court issue their opinions on the aforementioned rate cases presently on appeal, there can only be speculation as to the factuality or legitimacy of the Rate Bureau's rate revision and classification plan filings and the Commissioner's disapprovals of those filings.

There are still problems in the Reinsurance Facility. It is still operating at a loss approximating the loss ratio experienced prior to HB 658; with the recoupment procedures in HB 658, however, on paper the Facility will be breaking even: no profit, no loss. Again, it is too early to ascertain the effect of those procedures on the Facility and those insured by it. House Bill 658 provided for a "clean risk" subclassification in the Facility (those drivers without points for the previous three years whose policies were ceded to the Facility), to be defined by the Commissioner. In his supplemental order of November 30, 1978, the Commissioner directed the Rate Bureau to submit a plan whereby no driver in the Facility would be surcharged more than a driver outside the Facility if they had the same number of driving record points or chargeable accidents. This was coupled with his October 30, 1978, order to eliminate the separate Facility rate in the classification plan submitted earlier, and was intended to compensate for any revenue shortfalls resulting from that elimination. Both orders have been appealed. It is arguable as to whether or not the Commissioner's orders come within the letter or intent of the new provisions, but deference must be made to the courts for judgment on this matter. There is,

however, implication in the language of G. S. 58-248.34(e) that the surcharge does not necessarily have to apply exclusively to drivers whose policies are ceded to the Facility.

There were some questions among the Committee members about the intent behind the provision in G.S. 58-30.4 that premium income from premium surcharges for chargeable accidents, driving record points, and less than two years' driving experience, should provide not less than 25% of the total premium income of insurance companies writing automobile coverages in the State. It was felt that the reason for this percentage should have been made known and perhaps indicated somewhere in the statute in case it was challenged. On the surface it appears to be the result of an arbitrary decision.

At the public hearings the Committee was informed that a survey of the members of the Carolinas Association of Professional Insuranc Agents indicated that nearly 60% of the agents surveyed noticed an increase in the number of automobile insurance customers being written through the Facility since the effective date of HB 658; and that in many instances younger drivers are being ceded to the Facility and the agents in turn often have difficulties securing collision and comprehensive coverages at fair and reasonable rates. It was emphasized that some effort must be made to identify those drivers in the Facility with clean records to allow them to purchase automobile insurance at a basic rate less than a surcharged rate until their driving experience proves otherwise, and that the collective loss experience of Facility insureds has historically

proven to be substantially greater than that of the voluntary market, and therefore the Facility insureds should, on a collective basis, be charged more to assure a no-profit, no-loss bottom line for the Facility; but some attention must be given to a rating schedule that would recognize the safe drivers in the Facility and perhaps more severely surcharge drivers with points. The Speaker felt that a consumer should have full availability of automobile insurance coverages if the consumer's policy is ceded to the Facility; and that inclusion of collision and comprehensive coverages at rates deemed adequate for the combined experience of insureds having such coverage through the Facility should be available.

There has been much criticism of the use of bureau rates as required by HB 658 and by the old prior approval laws. House Bill 658 was an improvement in that it decreased the number of rate bureaus from three to one, but the concept of uniform bureau rates for essential lines is still present. Because bureau rates are based on industry-wide averages, which combine the experience of the efficient and inefficient insurers, such uniform rates are apt to be excessive for some policyholders. A company with efficient management and underwriting capabilities or with better than average loss experience might be able to charge less for coverage based on its own experience, while an inefficient company is protected from competition by use of the bureau rates. A good test of a file and use/open competition law (such as that contained in HB 658 for nonessential lines) is whether or not companies

continue to use bureau rates (which is still permitted) or establish their own rates.

ALTERNATIVES

The options before the 1979 General Assembly regarding HB 658 are:

1. Extension of the September 1, 1980, expiration date contained in Section 25 of the bill;
2. Extension with modifications;
3. Repeal; or
4. No action, thereby allowing HB 658 to expire.

House Bill 658 repealed and amended various provisions in General Statutes Chapters 58 and 97 and enacted new provisions dealing with the same subject metter. If the act is left to expire, the question arises as to what effect there might be on the provisions that were repealed or amended by HB 658. There is no North Carolina case or statutory law covering this situation. It is generally held in other jurisdictions that the laws repealed or amended by a temporary act are not revived upon its expiration unless the legislature expressly provides for such revival. If the act is repealed, the laws repealed by that act are revived without any formal language for that purpose. This is a rule of statutory construction as stated in four North Carolina Supreme Court decisions; and is also the rule in other jurisdictions, absent a statute to the contrary.

The next question that comes to mind is what effect is there on the provisions amended by HB 658 if the act is repealed. The general rule is that the repeal of an amendatory act does not revive the law amended by the act, but the rule is not universally followed. There is no North Carolina case or statutory law on this point. The four cases mentioned above dealt only with situations where the acts in question repealed prior laws but did not amend them.

Therefore, if the General Assembly wishes to revive statutes that have been repealed, amended, and replaced by a temporary act, it should expressly repeal the entire temporary act and specifically set out the provisions of the statutes it wishes to revive. Clear legislative expression is always desirable in order to avoid confusion and litigation over the meaning of and intent surrounding the acts of the General Assembly; and although the revival of a repealed statute by reference only to its title is valid (absent a constitutional provision to the contrary), a bill only containing many references to article and section numbers of the General Statutes would greatly impede analysis and consideration of that bill during the legislative process.

It is customary for interim study groups to prepare and submit with their reports to the General Assembly specific legislation to implement their substantive recommendations; due to time constraints and the complexity of the subject matter under consideration, however, the recommendations of this Committee are not accompanied by any proposed legislation in the format of a bill or bills.

It is anticipated that the members of the 1979 General Assembly and the standing House and Senate Committees on Insurance will digest this report; solicit, receive, and analyze information relevant to their assessments of the insurance situation in North Carolina; and arrive at specific legislation to implement the consensus of the General Assembly. It is recommended that the standing insurance committees retain an experienced consultant to assist in and facilitate the analysis of all of the complicated economic and statistical matters that will come before them.

Nonessential Lines

1. The September 1, 1980, expiration date clause contained in Section 25 of Chapter 828 of the 1977 Session Laws (HB 658) should be repealed insofar as it applies to the nonessential lines provisions of Article 12C of General Statutes Chapter 58. It appears to the Committee that the area of nonessential lines

has been successfully addressed by the 1977 legislation, as reflected in the Committee's findings beginning on page 24 of this report. Although the inclusion of an expiration date in legislation is designed to and usually does guarantee review and consideration by the General Assembly, the absence of such a clause certainly does not preclude legislative action in an area as significant as insurance rate regulation.

2. The second sentence of G.S. 58-131.37(b) should be repealed. This provision states: "It is presumed that a reasonable degree of price competition exists if there are a number of insurers actively engaged in the class of business and there are rate differentials in that class of business." When the rate standards provisions of G.S. 58-131.37 are considered in their entirety, there is no reason to retain this statutory presumption.

Essential Lines

1. The September 1, 1980, expiration date clause contained in Section 25 of Chapter 828 of the 1977 Session Laws (HB 658) insofar as it applies to the essential lines provisions of Article 12B of General Statutes Chapter 58, should be either repealed, or at a minimum, extended to September 1, 1981. In light of the considerations cited in pages 44-47 of this report and the recommended modifications to Article 12B that follow, the Committee is of the opinion that the law should be given sufficient time to work.

2. Article 12B of General Statutes Chapter 58 should be revised to:

(a) Eliminate the mandatory use of uniform bureau rates for the essential lines of insurance referred to in G.S. 58-124.17(1 and to allow insurers that provide those coverages to individually file their rates and supporting data with the Commissioner of Insurance;

(b) Require the consideration in the ratemaking process of investment income earned or realized by insurers both from their unearned premium or loss reserve funds;

(c) Require the sole use of North Carolina experience data in ratemaking factors by insurers that underwrite a given percentage share of the North Carolina market or underwrite in excess of a given premium dollar level, or both;

(d) Require that due consideration be given to past and not prospective loss experience and expenses in North Carolina;

(e) Require in the ratemaking factors that consideration be given only to the experience of insurers only for the most recent one-year period for which such information is available;

(f) Remove the cap on automobile insurance rate increases provided for in G.S. 58-124.26;

(g) State that the purposes of Article 12B are: to promote the public welfare and protect policyholders from the adverse effects of excessive, inadequate, or unfairly discriminatory rates;

to encourage independent action by and reasonable price competition among insurers; to provide for insurance rates that are responsive to competitive market conditions; to further improve the availability of insurance in North Carolina; to encourage the most efficient and economical marketing practices; and to authorize cooperative action among insurers in the ratemaking process and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(h) Authorize insurers with either limited or no North Carolina experience to use rates prepared by a rating organization, as is presently permitted in Article 12C of General Statutes Chapter 58.

3. The substance of the provisions of G.S. 58-124.20, 58-124.21, 58-124.22, 58-124.23, 58-124.27 and 58-124.28 should be retained. These sections would need some modification in form to parallel the recommendation concerning the use of bureau rates. The Committee is of the opinion that the time schedules and other provisions with respect to essential lines that are now in existence should be retained.

4. The House and Senate Committees on Insurance should give consideration to establishing a stated numerical interest rate for escrow refunds provided for in G.S. 58-124.22(b), in lieu of the present interest rate language in that subsection.

5. A provision contained in G.S. 58-30.4, which provides that the premium income from insureds subject to premium surcharges shall provide not less than one-fourth of the total premium income of insurers in writing and servicing motor vehicle coverages in North Carolina, should be repealed; and the statutory references at the end of that section should correctly read, "G.S. 58-124.20, 58-124.21, and 58-124.22." See page 48 of this report.

6. The House and Senate Committees on Insurance should give consideration to increasing the minimum automobile liability insurance coverages required by the Motor Vehicle Safety and Financial Responsibility Act of 1953 (Article 9A of General Statutes Chapter 20). The present minimum coverages are $15,000 for bodily injury or death to one person, $30,000 for bodily injury or death to two or more persons, and $5,000 for property damage, arising out of any one motor vehicle accident. These coverages have been in effect since January 1, 1974, and the Committee believes that the inflationary period experienced subsequent to that date and the public interest of having adequate financial responsibility mandate a reassessment of those coverages.

7. Inasmuch as G.S. 58-7.2 requires the Commissioner of Insurance to appoint a chief actuary, and this statute has not been complied with, the General Assembly should give due consideration to appropriating the necessary funds to the Department of Insurance for the employment of a property and casualty actuary.

Qualified actuaries command and receive substantial salaries for their services. The Committee believes that the State would greatly benefit by the employment of a full-time actuary who would have the expertise necessary to analyze rate filings and thereby facilitate and perhaps expedite the ratemaking process. The Committee also believes that this consideration should be given priority over any other personnel requests from the Department of Insurance.

Motor Vehicle Reinsurance Facility

1. The Reinsurance Facility should continue as a nonprofit, no loss, unincorporated legal entity, be governed by the provisions of revised Article 12B (as recommended in this report) in conjunction with Article 25A of General Statutes Chapter 58, and file rates and supporting data for motor vehicle insurance policies reinsured by the Facility in the same manner as individual insurers.

2. There should be a statutory definition of a "clean risk" subclassification within the Facility, in which subclassification the insureds would pay Facility rates but would not be subject to the Facility surcharge. The Committee is of the opinion that it is unfair for motorists who might fall within a "clean risk" subclassification to subsidize other motorists in the Facility. The Commissioner of Insurance has not overlooked his authority under HB 658 to define a "clean risk", but, as indicated on page 47 of this report, has opted to remove this inequity by a different method. One example of a "clean risk" suggested by the Committee

is "any person duly licensed to operate a motor vehicle who has had a minimum of two years actual driving experience and who has no chargeable accidents nor moving violations within the last three years of actual driving experience."

3. The House and Senate Committees on Insurance should consider the possibility of adding automobile physical damage (collision), theft, and comprehensive insurance coverages to the automobile coverages the Facility is presently required to reinsure. The Committee believes that a person should have full availability of automobile insurance if that person is ceded to the Reinsurance Facility. Motorists who are being ceded to the Facility in many instances have difficulties obtaining collision and comprehensive coverages at reasonable rates. While it is true that these coverages are not required by the Financial Responsibility Acts of 1953 and 1957, they are (a) required by financial institutions as a method of protecting their collateral during the terms of automobile loans and (b) economic necessities to many persons who hold the legal titles to their motor vehicles.

4. The House and Senate Committees on Insurance should thoroughly examine the reinsurance facility concept as a method of addressing the automobile residual market. The 1977 General Assembly, realizing that the reinsurance facility concept was fairly well-rooted in the automobile insurance marketplace, wisely chose to attempt to correct the Facility's shortcomings rather

than look to other residual market mechanisms. It is still too early in the life of HB 658 to assess its impact on the Facility, and perhaps the changes in the Facility's operation made by HB 658 will eventually improve the residual market; but it also might be wise to explore either further modifications to the reinsurance facility concept or other residual market mechanisms in the event there is no further improvement in the present Facility operations.

Study Continuation

1. There should be a continuation of the study and monitoring of the insurance market and rate regulation system in North Carolina. Whether this study is conducted by a committee of the Legislative Research Commission or by a special study commission, the study group should be authorized and funded to hire staff support in addition to that provided by the General Research Division of the Legislative Services Office. This study and monitoring effort will require acute economic and statistical analysis in addition to the legal analysis provided by the General Research Division. The study committee or commission should make an interim report to the 1980 Session of the 1979 General Assembly and a final report to the 1981 General Assembly.

Cancellations Without Cause

1. The House and Senate Committees on Insurance should solicit information concerning insurance contract cancellations that are made by insurers without just cause. The Committee has

heard of general allegations that some insurers in automobile, homeowners, and accident and health insurance lines have cancelled contracts with policyholders for what appear to be arbitrary reasons The specifics of these cancellations have not been made known to the Committee; but the Committee urges the standing insurance committees to make inquiries into this area and explore the possibility of remedial legislation without any intention of compromising the concepts of the free enterprise system.

Other Insurance Lines

Because of the amount of time required to examine the effects of HB 658, the ultimate schedule of the Committee, and the absence of input on and requests to review other insurance lines, this report is mainly an examination of HB 658 and its known effects on the North Carolina insurance market.

The Committee is aware of efforts by the insurance industry to address what it alleges to be a crisis situation in products liability insurance; the approach being taken, however, is not through the insurance laws of North Carolina but through other substantive and procedural laws related to tort liability.

The Committee received no input regarding any problems in accident and health insurance lines although it did solicit information in this area. The Committee endorses the purpose of HB 830 of the 1977 General Assembly, which was introduced on April 8, 1977, and bypassed during the ensuing, time-consuming effort by the

standing insurance committees to solve the fire and casualty insurance problems. HB 830 would have provided reasonable standardization and simplification of terms and coverages of (1) accident and health insurance policies issued under General Statutes Chapter 58 and (2) subscriber contracts, certificates, and plans of hospital, medical, and dental service corporations issued under General Statutes Chapter 57. The bill's purposes were to: Facilitate public understanding and comparison, eliminate misleading or unreasonably confusing provisions related to the purchase of the insurance and the settlement of claims, and provide for full disclosure in the sale of those policies, contracts, certificates, or plans.

Appendix A

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

MEMBERSHIP

1977-1979

Cochairmen:

House Speaker Carl J. Stewart, Jr.
Gastonia

Senate President Pro Tempore John T. Henley
Hope Mills

Members:

Representative Chris S. Barker, Jr.
New Bern

*Representative A. Hartwell Campbell
Wilson

Representative John R. Gamble, Jr.
Lincolnton

Representative H. Parks Helms
Charlotte

Representative Lura S. Tally
Fayetteville

Senator Dallas L. Alford, Jr
Rocky Mount

**Senator Russell G. Walker
Asheboro

Senator Cecil J. Hill
Brevard

Senator Robert Byrd Jordan,
Mt. Gilead

Senator Vernon E. White
Winterville

*Replaced Representative Thomas O. Gilmore in 1978.

**Replaced Senator Luther J. Britt, Jr., in 1978

Appendix B

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

INSURANCE LAWS STUDY COMMITTEE

1977-1979

Legislative Research Commission Member Responsible for Study:

Senator Vernon E. White
Winterville

Committee Cochairmen:

Representative A. Hartwell Campbell
Wilson

Senator Carl D. Totherow
Winston-Salem

Committee Members:

Representative Judson D. DeRamus, Jr.
Winston-Salem

Senator Fred D. Alexander
Charlotte

Representative Thomas W. Ellis, Jr.
Henderson

Senator Robert Byrd Jordan, III
Mt. Gilead

Representative Mary P. Seymour
Greensboro

Senator Carolyn Mathis
Charlotte

Representative Betty Dorton Thomas
Concord

Senator R. C. Soles, Jr.
Tabor City

Appendix C

S.B. 740 CHAPTER 1028

AN ACT DIRECTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission shall study the insurance laws of the State, examining the effects of the 1977 General Assembly changes in the laws and anticipating other insurance law issues to come before the 1979 General Assembly.

Sec. 2. The Commission shall report the results of its study to the 1979 General Assembly.

Sec. 3. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.

Appendix D

H. B. 296 **CHAPTER 851**

AN ACT TO DIRECT THE LEGISLATIVE RESEARCH COMMISSION TO STUDY VARIOUS MATTERS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is directed to study the following issues, designing the individual study efforts as described in the other sections of this act:

* * * * *

(6) Fire and casualty insurance rate regulation (H. 1214);

* * * * *

Sec. 7. In its study of fire and casualty insurance rate regulation the Legislative Research Commission shall have the responsibility to make a thorough and comprehensive study of all aspects of fire and casualty insurance rate regulation in North Carolina and in other states in the Union. In conducting its studies the Legislative Research Commission shall evaluate and report on the system of prior approval rate making as used in this State and other states and shall compare the effectiveness and rate impact of the practices and procedures utilized in this State as compared with other states. In addition, the Legislative Research Commission shall evaluate and report on the rate impact of other systems of rate making including but not limited to (1) file and use rate making and (2) open competition rate making and (3) rate making utilizing the concept of return on invested capital. The Legislative Research Commission shall further evaluate the advantages and disadvantages of establishing an insurance commission consisting of three or more members with adequate supporting staff which shall be invested with the authority to determine and fix fire and casualty rates for use in North Carolina.

* * * * *

Appendix E

House Bill 658
1977 Session Laws, Chapter 828

ESSENTIAL LINES

House Bill 658 created the North Carolina Rate Bureau, which replaced the North Carolina Fire Insurance Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau. This organization is responsible for filing rates for the so-called essential lines of insurance, i.e.:

*(1) automobile liability insurance for private passenger (non-fleet) motor vehicles ;

*(2) automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with private passenger (non-fleet) automobile liability insurance;

*(3) automobile physical damage and theft for private passenger (non-fleet) motor vehicles ;

(4) homeowners and farmowners-residential real property with not more than four housing units located in this state and any contents thereof; and

(5) worker's compensation and employers liability insurance written in connection therewith. See G.S. 58-124.17(3).

* Vehicles operating under certificate of authority from the Utilities Commission or the Interstate Commerce Commission are not included.

FILING OF RATES - ESSENTIAL LINES

1. The Bureau must file rates with the Commissioner. The effective date shall be specified in the filing, but it may not be earlier than 90 days from the date it is received by the Commissioner.

2. The Commissioner may within 30 days of receipt of the filing give written notice specifying in what respect the filing fails to comply and fixing a date for a hearing not less than 30 days from the date of mailing the notice.

3. If no notice of hearing is sent out within 30 days, the filing is deemed approved and the rates become effective on the date specified therein, which may not be earlier than 90 days after it is received by the Commissioner.

4. The Commissioner, after hearing, may issue an order within 90 days of receipt of the filing, fixing a date thereafter, within a reasonable time, after which the filing is no longer effective.

5. Companies may use the rates pending appeal and judicial review if they agree to place in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premiums collected during the interim period.

NON-ESSENTIAL LINES

These lines of insurance consist of all property and casualty coverages other than those designated as essential and filed by the North Carolina Rate Bureau, and other than ocean marine insurance, title insurance, and mortgage guaranty insurance.

Examples of non-essential lines are:

(1) Commercial automobile liability;
(2) Commercial automobile physical damage and theft coverages;
(3) Commercial automobile medical payments and uninsured motorists coverages;
(4) Residential real property with more than four housing units and contents thereof;
(5) Commercial real property;
(6) Professional liability coverages (malpractice);
(7) Owners, landlords and tenants-premises and operation liability for commercial properties;
(8) Commercial crime coverages;
(9) Employers dishonesty;
(10) Bonds; and
(11) Crop hail coverages, etc.

Rates must be filed with the Commissioner prior to use. Companies may use their own rates or the rates of a rating organization.

The Commissioner may call a hearing to review the rates. He may issue an order after hearing stating how the rate filing fails to comply with the standards set forth in G.S. 58-131.37.

During appeal, the company has the option to continue to use the rates, provided the company places in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premium collected during the interim period.

Forms for non-essential lines must be disapproved within 90 days or be deemed approved.

GENERAL STATUTES OF NORTH CAROLINA

CH. 58. INSURANCE

§ 58-7.2. Chief actuary. — The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

§ 58-30.3. Discriminatory practices prohibited. — No insurer shall after September 1, 1975, base any standard or rating plan for private passenger automobiles or motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. (1975, c. 666, s. 1.)

§ 58-30.4. Revised classifications and rates. — The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) Pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof, and the premium income from insureds subject to this premium surcharge shall provide not less than one fourth of the total premium income of insurers in writing and servicing the aforesaid coverages in this State. The classification plans and subclassification plans so promulgated by the Bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-128, 58-129, and 58-130. (1975, c. 666, s. 1; 1977, c. 828, s. 9.)

ARTICLE 12B.

North Carolina Rate Bureau.

(This Article expires September 1, 1980.)

§ 58-124.17. North Carolina Rate Bureau created. — There is hereby created a bureau to be known as the "North Carolina Rate Bureau," with the following objects and functions:

(1) To assume the functions formerly performed by the North Carolina Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for theft of and physical damage to private passenger (nonfleet) motor vehicles as the same are defined under Article 13C of this Chapter; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith.

(2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate made by it may be heard in person or by his authorized representative before the governing committee or other proper executive of the Bureau.

(3) The Bureau shall have the duty and responsibility of promulgating and proposing rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith. The provisions of this subdivision shall not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles.

(4) Agreements may be made between or among members with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The members may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner.

(5) It shall be the duty of all insurers underwriting workers' compensation insurance in this State and being members of the Bureau, as defined in this section and G.S. 58-124.18 to insure and accept any workers' compensation insurance risk which shall have been certified to be "difficult to place" by any fire and casualty insurance agent licensed in this State. When any such risk is called to the attention of the North Carolina Rate Bureau and it appears that said risk is in good faith entitled to such coverage, the Bureau shall fix the initial premium therefor, (subject to the approval of the Insurance Commissioner), and upon its payment said Bureau shall designate a member whose duty is

shall be to issue a standard workers' compensation policy of insurance containing the usual and customary provisions found in such policies therefor. Upon receipt of the required premium at the office of the Bureau during regular working hours the Bureau shall instruct the designated carrier to issue its policy of insurance to become effective as of 12:01 a.m. the following day, and the carrier shall be so bound; provided, that the carrier may request of the Bureau a certificate of the Department of Labor that the insured is complying with the laws, rules and regulations of that Department. Said certificate shall be furnished within 30 days by the Department of Labor, unless extension of time is granted by agreement between the Bureau and the Department of Labor. The Bureau shall make and adopt such rules as may be necessary to carry this section into effect, subject to final approval of the Insurance Commissioner. As a prerequisite to the transaction of worker's compensation insurance in this State every member of said Bureau writing such insurance shall file with the Insurance Commissioner written authority permitting said Bureau to act in its behalf as provided in this section, and an agreement to accept such risks as are assigned to said insurance by said Bureau, as provided in this section. (1977, c. 828, s. 6.)

§ 58-124.18. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses. — (a) Before the Commissioner of Insurance shall grant permission to any stock, nonstock, or reciprocal insurance company or any other insurance organization to write in this State insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein or other insurance coverages written in connection with the sale of such property insurance; or insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; or liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage or other insurance coverage written in connection with the sale of such liability insurance; or workers' compensation and employers' liability insurance written in connection therewith; it shall be a requisite that they shall subscribe to and become members of the Bureau.

(b) Each member of the Bureau writing any one or more of the above lines of insurance in North Carolina shall, as a requisite thereto, be represented in the Bureau and shall be entitled to one representative and one vote in the administration of the affairs of the Bureau. They shall, upon organization, elect a governing committee which governing committee shall be composed of equal representation by stock and nonstock members.

(c) The Bureau, when created, shall adopt such rules and regulations for its orderly procedure as shall be necessary for its maintenance and operation. No such rules and regulations shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the necessary expense of the Bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee. The Bureau shall be empowered to subscribe for or purchase any necessary service, and employ and fix the salaries of such personnel and assistants as are necessary.

(d) The Commissioner of Insurance is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the underwriting experience of lines of insurance referred to in this Article, and this information shall be available and for the use of the Bureau for the capitulation and promulgation of rates on lines of insurance as are subject to the rate-making authority of the bureau. (1977, c. 828, s. 6.)

§ 58-124.19. Method of rate making; factors considered. — The following standards shall apply to the making and use of rates:

(1) Rates shall not be excessive, inadequate or unfairly discriminatory.

(2) Due consideration shall be given to past and prospective loss experience, within this State, to the hazards of conflagration and catastrophe, to a reasonable margin for underwriting profit and to contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses specially applicable to this State, and to all other relevant factors including judgment factors, deemed relevant, within this State; provided, however, that countrywide expense and loss experience and other countrywide data shall be considered where credible North Carolina experience or data is not available.

(3) In the case of fire insurance rates, as are subject to the rate-making authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which such experience is available.

(4) Risks may be grouped by classifications and lines of insurance for establishment of rates and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau is directed to establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of the September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence. (1977, c. 828, s. 6.)

§ 58-124.20. Filing rates, plans with Commissioner; public inspection of filings. — (a) The Bureau shall file with the Commissioner copies of the rates, classification plans, rating plans and rating systems used by its members. Each filing shall become effective immediately on the date specified therein but not earlier than 90 days from the date such filing is received by the Commissioner.

(b) A filing shall be open to public inspection immediately upon submission to the Commissioner.

(c) The Bureau shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(d) On or before July 1 of each calendar year the Bureau shall submit to the Commissioner for the motor vehicle liability insurance subject to the provisions of this Article the experience, data, statistics, and information referred to in subsection (c) of this section and a rate review based on such data. (1977, c. 828, s. 6.)

§ 58-124.21. Disapproval; hearing, order; adjustment of premium, review of filing. — (a) At any time within 30 days from and after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent he contends such filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. At such hearing the factors specified in G.S. 58-124.19 shall be considered. If the Commissioner after hearing finds

that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which such filing shall no longer be effective. Any order of disapproval under this section must be entered within 90 days of the date such filing is received by the Commissioner.

(b) In the event that no notice of hearing shall be issued within 30 days from the date of any such filing, the filing shall be deemed to be approved. If the Commissioner disapproves such filing pursuant to subsection (a) as not being in compliance with G.S. 58-124.19, he may order an adjustment of the premium to be made with the policyholder either by refund or collection of additional premium, if the amount is substantial and equals or exceeds the cost of making the adjustment. The Commissioner may thereafter review any such filing in the manner provided, but if so reviewed, no adjustment of premium may be ordered. (1977, c. 828, s. 6.)

§ 58-124.22. Appeal of Commissioner's order. — (a) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter.

(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and no longer effective by order of the Commissioner issued under G.S. 58-124.21, the members of the Bureau shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided each such member shall place in escrow account the purportedly unfairly discriminatory or excessive portion of the premium collected during such interim period and the court, upon a final determination, shall order the escrowed funds to be distributed appropriately, except that refunds that are de minimis shall not be required. The court may also require that purportedly excess premiums resulting from an adjustment of premiums ordered pursuant to G.S. 58-124.21 (b) be placed in such escrow account pending judicial review. The amounts escrowed hereunder shall bear interest at the prime rate as of the date such rates were put into effect, but in no event, less than the legal rate, from the date of the Commissioner's order relating thereto. (1977, c. 828, s. 6.)

§ 58-124.23. Deviations. — (a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. However, an insurer may deviate from the rates promulgated by the Bureau provided the insurer has filed the deviation to be applied both with the Bureau and the Commissioner, and provided the said deviation is uniform in its application to all risks in the State of the class to which such deviation is to apply; and provided such deviation is approved by the Commissioner. The Commissioner shall approve proposed deviations if the same do not render the rates excessive, inadequate or unfairly discriminatory. If approved the deviation shall remain in force for a period of one year from the date of approval by the Commissioner. Such deviation may be renewed annually subject to all of the foregoing provisions. Those portions of this section providing for deviations shall not apply to workers' compensation and employers' liability insurance written in connection therewith.

(b) A rate in excess of that promulgated by the Bureau may be charged on any specific risk provided such higher rate is charged with the approval of the Commissioner and with the knowledge and written consent of the insured. (1977, s. 828, s. 6.)

§ 58-124.24. Appeal to Commissioner from decision of Bureau. — Any member of the Bureau may appeal to the Commissioner from any decision of the Bureau and the Commissioner shall, after a hearing held on not less than 10 days' written notice to the appellant and to the Bureau, issue an order approving the decision of the Bureau or directing it to give further consideration to such proposal. In the event the Bureau fails to take satisfactory action, the Commissioner shall make such order as he may see fit. (1977, c. 828, s. 6.)

§ 58-124.25. Existing rates, rating systems, territories, classifications and policy forms. — Rates, rating systems, territories, classifications and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 6.)

§ 58-124.26. Cap on automobile insurance rate increases. — Notwithstanding any other provision of this Article or Chapter, and with respect to private passenger (nonfleet) automobile liability insurance, automobile medical payments insurance, uninsured motorists coverage, and private passenger (nonfleet) automobile physical damage insurance, neither the North Carolina Rate Bureau nor any member thereof nor the North Carolina Motor Vehicle Reinsurance Facility shall increase the total combined general rate level for these coverages by more than twelve percent (12%) from the general rate level existing at the time of the ratification of this Article, provided that such increase shall not exceed six percent (6%) on or prior to July 1, 1978. Provided, however, the prohibition specified in this section shall terminate on July 1, 1979. (1977, c. 828, s. 6.)

§ 58-124.27. Notice of coverage or rate change. — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article. (1977, c. 828, s. 6.)

§ 58-124.28. Limitation. — Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 6.)

Article 13.

Fire Insurance Rating Bureau.

§§ 58-125 to 58-131.9: Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

Article 13A.

Casualty Insurance Rating Regulations.

§§ 58-131.10 to 58-131.25: Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

Article 13B.

Rate Regulation of Miscellaneous Lines.

§§ 58-131.26 to 58-131.33: Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

Cross References. — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the regulation of insurance rates, see § 58-131.34 et seq.

Editor's Note. — Session Laws 1977, c. 828, s. 25, provides:

"Sec. 25. This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Article 13C.

Regulation of Insurance Rates.

(This Article expires September 1, 1980.)

§ 58-131.34. Purposes. — The purposes of this Article are

(1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;

(2) To authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers;

(3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and

(5) To encourage the most efficient and economic marketing practices. (1977, c. 828, s. 2.)

§ 58-131.35. Definitions. — As used in this Article:

(1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.

(4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within the specific authorizations contained in G.S. 58-131.45, 58-131.46, 58-131.47 and 58-131.48, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

(6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a rating organization of which it is not a member, or (ii) with advisory services by an advisory organization of which it is not a member.

(7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

(8) "Private passenger motor vehicle" means:

a. A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or

b. A motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or

c. A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.

(9) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or less motor vehicles owned or hired under a long-term contract by the policy named insured. (1977, c. 828, s. 2.)

§ 58-131.36. Scope of application. — The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-131.45;
(2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;
(3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
(4) Accident, health, or life insurance;
(5) Annuities;
(6) Title insurance;
(7) Mortgage guaranty insurance;
(8) Workmen's compensation and employers' liability insurance written in connection therewith;
(9) For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance;
(10) Theft of or physical damage to private passenger (nonfleet) motor vehicles; and
(11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations. (1977, c. 828, s. 2.)

§ 58-131.37. Rate standards. — (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) Rates are not excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. It is presumed that a reasonable degree of price competition exists if there are a number of insurers actively engaged in the class of business and there are rate differentials in that class of business.

(c) If such competition does not exist, rates are excessive if they clearly produce a long-run underwriting profit that is unreasonably high for the class of business.

(d) No rate shall be held to be inadequate unless (i) the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer, or unless (ii) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(e) A rate is not unfairly discriminatory in relation to another in the same class if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the rates reflect the differences with

reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy. (1977, c. 828, s. 2.)

§ 58-131.38. Rating methods. — In determining whether rates comply with the standards under G.S. 58-131.37, the following criteria shall be applied:

(1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrope hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; provided, however, that countrywide expense and loss experience and other countrywide data shall be considered where credible North Carolina experience or data is not available.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

(3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience. (1977, c. 828, s. 2.)

§ 58-131.39. Filing of rates and supporting data. — (a) Except as to inland marine risks which by general custom of the business are not written according to manual rates and rating plans, every admitted insurer and every licensed rating organization, which has been designated by any insurer for the filing of rates under G.S. 58-131.41, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective.

(b) The Commissioner may require the filing of supporting data including:

(1) The experience and judgment of the filer, and to the extent the filer wishes or the Commissioner requires, of other insurers or rating organizations;

(2) The filer's interpretation of any statistical data relied upon; and

(3) Descriptions of the methods employed in setting the rates.

(c) Upon written consent of the insured, stating his reasons therefor, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, provided that it is filed with the Commissioner in accordance with subsection (a) of this section. (1977, c. 828, s. 2.)

§ 58-131.40. Filing open to inspection. — Each filing and supporting data filed under this Article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor. (1977, c. 828, s. 2.)

§ 58-131.41. Delegation of rate making and rate filing obligation. — (a) An insurer may itself establish rates based on the factors in G.S. 58-131.38 or it may use rates prepared by a rating organization, with average expense factors determined by the rating organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-131.39 by giving notice to the Commissioner that it uses rates prepared by a designated rating organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the rating organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer. (1977, c. 828, s. 2.)

§ 58-131.42. Disapproval of rates; interim use of rates. — (a) If the Commissioner finds after a hearing that a rate is not in compliance with G.S. 58-131.37, he shall issue an order specifying in what respects it so fails, and stating when, following a reasonable period thereafter, the rate shall be deemed no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(b) Whenever a rate of an insurer is held to be unfairly discriminatory or excessive and the rate is deemed no longer effective by order of the Commissioner issued under subsection (a) of this section, the insurer shall have the option to continue to use the rate for the interim period pending judicial review of the order, provided that the insurer shall place in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premium collected during the interim period. The court, upon a final determination, shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required. (1977, c. 828, s. 2.)

§ 58-131.43. Rating organizations. — (a) No rating organization shall provide any service relating to rates subject to this Article and no insurer shall utilize the service of such organization for such purpose unless the organization has obtained a license from the Commissioner.

(b) No rating organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A rating organization applying for a license shall include with its application:

(1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
(2) A list of its members and subscribers;
(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;
(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and
(5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner finds that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(f) Evey rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977. (1977, c. 828, s. 2.)

§ 58-131.44. Advisory organizations. — (a) No advisory organization shall conduct its operations in this State unless and until it has filed with the Commissioner:

(1) A copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;
(2) A list of its members and subscribers; and
(3) The name and address of a resident of this State upon whom netices, process affecting it, or orders of the Commissioner may be served.

(b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(c) No advisory organization shall engage in any unfair or unreasonable practice with respect to its activities. (1977, c. 828, s. 2.)

§ 58-131.45. Joint underwriting and joint reinsurance organizations. — (a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall file with the Commissioner:

(1) A copy of its constitution, articles of incorporation, agreement, or association, and bylaws;

(2) A list of its members; and

(3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.

(b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(c) If after a hearing, the Commissioner finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, he may issue a written order specifying in what respects the activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, and requiring the discontinuance of the activity or practice. (1977, c. 828, s. 2.)

§ 58-131.46. Insurers authorized to act in concert. — Subject to and in compliance with the provisions of this Chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research. (1977, c. 828, s. 2.)

§ 58-131.47. Insurers authorized to act in concert; admitted insurers with common ownership or management; matters relating to co-surety bonds. — With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. To the extent that such matters relate to co-surety bonds, two or more admitted insurers executing co-surety bonds are authorized to act in concert between or among themselves the same as if they constituted a single insurer. (1977, c. 828, s. 2.)

§ 58-131.48. Agreements to adhere. — No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section shall not apply to apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-131.52: Provided, however, that members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, consistently or intermittently use the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement. (1977, c. 828, s. 2.)

§ 58-131.49. Exchange of information or experience data; consultation with rating organizations and insurers. — Rating organizations licensed pursuant to G.S. 58-131.43 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with rating organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems. (1977, c. 828, s. 2.)

§ 58-131.50. Recording and reporting of experience. — The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The Commissioner may designate one or more rating organizations to assist him in gathering and making compilations of such experience. (1977, c. 828, s. 2.)

§ 58-131.51. Examination of rating, joint underwriting, and joint reinsurance organizations. — The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-131.43 and each advisory organization licensed pursuant to G.S. 58-131.44. He may, as often as he may deem it expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-131.45. Such examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The reasonable cost of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books, records, account, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of such state. (1977, c. 828, s. 2.)

§ 58-131.52. Apportionment agreements among insurers. — Agreements may be made between or among insurers with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The insurers may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner. (1977, c. 828, s. 2.)

§ 58-131.53. Request for review of rate, rating plan, rating system or underwriting rule. — Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-131.54. (1977, c. 828, s. 2.)

§ 58-131.54. Hearing and judicial review. — (a) Any insurer, person, or organization to which the Commissioner has directed an order or decision made

without a hearing may, within 30 days after notice to it of the order or decision, make written request to the Commissioner for a hearing thereon. The Commissioner shall hear the party or parties within 20 days after receipt of the request and shall give not less than 10 days' written notice of the time and place of hearing. Within 15 days after the hearing, the Commissioner shall affirm, reverse, or modify his previous action, and specify his reasons therefor. Pending such hearing and decision thereon, the Commissioner may suspend or postpone the effective date of his previous action.

(b) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter. (1977, c. 828, s. 2.)

§ 58-131.55. Penalties. — (a) The Commissioner may, if he finds that any person or organization has violated any provision of this Article, impose a penalty of not more than five hundred dollars ($500.00) for each such provision violated; but if he finds such violation to be willful, he may impose a penalty of not more than five thousand dollars ($5,000) for each such provision violated. Such penalties may be in addition to any other penalty provided by law.

(b) The Commissioner may suspend the license of any rating organization or insurer that fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and such suspension shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization, and specifying the alleged violation. (1977, c. 828, s. 2.)

§ 58-131.56. Policy forms. — Except for fidelity, surety, or guaranty bonds and except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, no policy form applying to insurance on risks or operations covered by this Article shall be delivered or issued for delivery unless it has been filed with the Commissioner and either he has approved it, or 90 days have elapsed and he has not disapproved it. (1977, c. 828, s. 2.)

§ 58-131.57. Existing rates, rating systems, territories, classifications and policy forms. — Rates, rating systems, territories, classifications, and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 2.)

§ 58-131.58. Payment of dividends not prohibited or regulated; plan for payment into rating system. — Nothing in this Article shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system. (1977, c. 828, s. 2.)

§ 58-131.59. Notice of coverage or rate change. — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article. (1977, c. 828, s. 2.)

§ 58-131.60. Limitation. — Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 2.)

Article 25A.

North Carolina Motor Vehicle Reinsurance Facility.

§ 58-248.26. Definitions. — As used in this Article:

(1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.

(2) "Commissioner" means the Commissioner of Insurance.

(3) "Company" means each member of the Facility.

(4) "Eligible risk" means a person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State or who has a valid driver's license in this State or who is required to file proof of financial responsibility pursuant to Article 9A or 13 of the North Carolina Motor Vehicle Code in order to register his motor vehicle or obtain a driver's license in this State; or a nonresident of this State who owns a motor vehicle registered or principally garaged in this State, or the State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided, however, that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

(5) "Facility" means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of this Article.

(6) "Motor vehicle" means any motor vehicle as defined under Article 9A of Chapter 20 of the General Statutes of North Carolina.

(7) "Motor vehicle insurance" means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle as defined in Article 9A of Chapter 20 of the General Statutes of North Carolina for bodily injury including death and property damage and includes medical payments and uninsured motorist coverages.

(8) "Person" means every natural person, firm, partnership, association, corporation or government or agency thereof.

(9) "Plan of operation" means the plan of operation approved pursuant to the provisions of this Article.

(10) Repealed by Session Laws 1977, c. 828, s. 10, effective September 1, 1977. (1973, c. 818, s. 1; 1977, c. 828, s. 10.)

§ 58-248.27. North Carolina Motor Vehicle Reinsurance Facility; creation; membership. — There is created a nonprofit unincorporated legal entity to be known as the North Carolina Reinsurance Facility consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Facility and shall be bound by the rules of operation thereof as provided for in this Article and as promulgated by the Board of Governors. No company may withdraw from membership in the Facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance. (1973, c. 818, s. 1.)

§ 58-248.28. Obligations after termination of membership. — Any company whose membership in the Facility has been terminated by withdrawal shall, nevertheless, with respect to its business prior to midnight of the effective date of such termination continue to be governed by this Article. (1973, c. 818, s. 1.)

§ 58-248.29. Insolvency. — Any unsatisfied net liability to the Facility of any insolvent member shall be assumed by and apportioned among the remaining members in the Facility in the same manner in which assessments are apportioned by the Facility. The Facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the Facility in accordance with this Article. (1973, c. 818, s. 1; 1977, c. 828, s. 12.)

§ 58-248.30. Merger, consolidation or cession. — When a member has been merged or consolidated into another insurer, or has reinsured its entire motor vehicle liability insurance business in the State with another insurer, such company or its successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the Facility according to the rules of operation. (1973, c. 818, s. 1; 1977, c. 828, s. 13.)

§ 58-248.31. General obligations of insurers. — Except as otherwise provided in this Article all insurers as a prerequisite to the further engaging in this State in the writing of motor vehicle insurance or any component thereof shall accept and insure any otherwise unacceptable applicant therefor who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the Facility. All such insurers shall equitably share the results of such otherwise unacceptable business through the Facility and shall be bound by the acts of their agents in accordance with the provisions of this Article. No insurer shall impose upon any of its agents, solely on account of ceded business received from such agents, any quota or matching requirement for any other insurance as a condition for further acceptance of ceded business from such agents. (1973, c. 818, s. 1.)

§ 58-248.32. General obligations of agents. — (a) Except as otherwise provided in this Article, no licensed agent of an insurer authorized to solicit and accept premiums for motor vehicle insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for such insurance and to immediately bind the coverage applied for and for a period of not less than six months if cession of the particular coverage and coverage limits applied for are permitted in the Facility, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the agent's customary practices and procedures. The commission paid on the insurance coverages provided in this Article shall not be less than the commission on insurance coverage written through the North Carolina Insurance Plan on May 1, 1973. The same commission shall apply uniformly statewide.

(b) It shall be the responsibility of the agent to write the coverage applied for at what he believes to be the appropriate rate level. If coverage is written at the Facility rate level and the company elects not to cede, the policy shall be rated at the voluntary rate level. Coverage written at the voluntary rate level which is not acceptable to the company must either be placed with another company or rated at the Facility rate level by the agent. (1973, c. 818, s. 1; 1977, c. 828, s. 11.)

§ 58-248.33. The Facility; functions; administration. — (a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk and the Facility shall accept all placements made in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
   a. Bodily injury liability: twenty-five thousand dollars ($25,000) each person, fifty thousand dollars ($50,000) each accident;
   b. Property damage liability: ten thousand dollars ($10,000) each accident;
   c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;
   d. Uninsured motorist: twenty-five thousand dollars ($25,000) each person; fifty thousand dollars ($50,000) each accident for bodily injury; five thousand dollars ($5,000) each accident property damage (one hundred dollars ($100.00) deductible);

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident

Property damage liability: fifty thousand dollars ($50,000) each accident

Medical payments: two thousand dollars ($2,000) each person

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and five thousand dollars ($5,000) for property damage (one hundred dollars ($100.00) deductible).

Any other motor vehicle insurance required by law: in twice the amount of coverage limits required by law.

(3) Whenever the additional ceding privileges are provided as in G.S. 58-248.33(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Automobile Rate Administrative Office.

(c) The Facility shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses are adjusted and to effect settlement where settlement is appropriate.

(d) The Facility shall be administered by a Board of Governors. The Board of Governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Facility insurance company member serving on the Board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the Board at the same time. Five members of the Board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the Board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Mutual Insurance Agents, North Carolina Division. The initial term of office of said Board members shall be two years. Following completion of initial terms, successors to the members of the original Board of Governors shall be selected to serve three years. All members of the Board of Governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the Board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article.

(e) The Commissioner and member companies shall provide for a Board of Governors within 30 days after May 24, 1973. If any member seat on the initial Board of Governors is not filled in accordance with this Article within such time, then, in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (d) of this section to serve the initial term on the Board of Governors. As soon as possible after its selection, the Commissioner shall call for the initial meeting of the Board. After the Board of Governors have been selected it shall then elect from its membership a chairman and shall then meet thereafter as often as the chairman shall require or at the request of three members of the Board of Governors. The chairman shall retain the right to vote on all issues. Five members of the Board of Governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive years.

(f) The Board of Governors shall have full power and administrative responsibility for the operation of the Facility. Such administrative responsibility shall include but not be limited to:

(1) Proper establishment and implementation of the Facility.

(2) Employment of a manager who shall be responsible for the continuous operation of the Facility and such other employees, officers and committees as it deems necessary.

(3) Provision for appropriate housing and equipment to assure the efficient operation of the Facility.

(4) Promulgation of reasonable rules and regulations for the administration and operation of the Facility and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.

(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

(1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.

(2) To receive and record cessions.

(3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.

(4) To contract for goods and services from others to assure the efficient operation of the Facility.

(5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.

(6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. Such standards shall be:

a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;

b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars ($20,000) from motor vehicle insurance;

c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of his application was 200 or more;

d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;

e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agents to write directly on behalf of the Facility. However, for this purpose, the Facility does not act as an insurer, but only as the statutory agent of all the members of the Facility which shall be bound on risks written by the Facility's appointed agent. Adequate provision shall be made by the Facility to assure that business produced by designated agents which would meet the underwriting criteria of the company shall be written at the voluntary rate and not at the Facility rate if higher. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through said carriers shall be appropriately classified and rated. To this end, the same underwriting criteria for classification and rates used for its voluntary agents shall be used by the servicing carrier servicing such Facility agents in order to determine whether the voluntary rate or the Facility rate shall apply. All business produced by designated agents or Facility agents may be ceded to the Facility.

(7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.

(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-248.34(f) and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.

(9) To receive or distribute all sums required by the operation of the Facility.

(10) To accept all risks submitted in accordance with this Article.

(11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.

(12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.

(h) Each member company shall authorize the Facility to audit that part of the company's business which is written subject to the Facility in a manner and time prescribed by the Board of Governors.

(i) The Board of Governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the Board of Governors.

(j) There shall be furnished to each member an annual report of the operation of the Facility in such form and detail as may be determined by the Board of Governors.

(k) Each member shall furnish statistics in connection with insurance subject to the Facility as may be required by the Facility. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums charged, expenses and losses. (1973, c. 818, s. 1.)

(l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Commissioner may establish separate subclassifications within the Facility for clean risks as defined by the Commissioner. Such filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-131.42 of this Chapter. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, if the Commissioner determines, after hearing, that any class reinsured in the Facility is entitled to a subsidy, the Commissioner can order that such subsidy shall be provided in which event the difference between the actual rate charged and the actuarially sound and self-supporting rates for such class shall be recouped in similar manner as assessments pursuant to G.S. 58-248.34(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive.

(m) In addition to annual premiums, the rules of the Facility shall allow semiannual and quarterly premium terms. (1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19.)

§ 58-248.34. Plan of operation. — (a) Within 60 days after the initial organizational meeting, the Facility shall submit to the Commissioner, for his approval, a proposed plan of operation, consistent with the provisions of this Article, which shall provide for economical, fair and nondiscriminating administration and for the prompt and efficient provision of motor vehicle insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this Article.

(b) The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the Article if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation the Commissioner shall notify the Facility in what respect the plan of operation fails to meet the specific requirements of this Article. The Facility shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this Article. In the event the Facility fails to submit a revised plan of operation which meets the specific requirements of this Article within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this Article.

(c) Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision or amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or the promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members if necessary to defray losses and expenses, the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the Facility, the recoupment of losses sustained by the Facility, which losses may be recouped either through surcharging persons reinsured by the Facility or by equitable pro rata assessment of member companies, the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, and the procedure by which reinsurance shall be accepted by the Facility; and shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars ($25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business.

(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, commence recoupment of that assessment by way of an identifiable surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. Such surcharge may be at a percentage of premium or dollar amount per policy adopted by the Board of Governors of the Facility. With the exception of the

recoupment provided for in G.S. 58-248.33(l) and with the exception of the surcharge against persons reinsured by the Facility as provided for in G.S. 58-248.34(e), recoupment, if necessary, shall not be made based on loss or expense experience prior to July 1, 1979. If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility at a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. The amount of recoupment shall not be considered or treated as premium for any purpose.

(g) The plan of operation shall provide that all investment income from the premium on business reinsured by the Facility shall be retained by or paid over to the Facility. In determining the cost of operation of the Facility, all investment income shall be taken into consideration.

(h) The plan of operation shall provide for audit of the annual statement of the Facility by independent auditor approved by the Legislative Services Commission. (1973, c. 818, s. 1; 1975, c. 19, s. 18; 1977, c. 828, ss. 20, 21.)

§ 58-248.35. Procedure for cession provided in plan of operation. — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation. (1973, c. 818, s. 1; 1977, c. 828, s. 22.)

§ 58-248.36. Termination of insurance. — No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

(1) Nonpayment of premium when due to the insurer or producing agent.

(2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.

(3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-56. (1973, c. 818, s. 1.)

§ 58-248.37. Exemption from requirements of this Article of companies and their agents. — The Board of Governors may exempt a company and its agents from the requirements of this Article, insofar as new business is concerned. The Board may further exempt a company and its agents from the requirements of this Article regarding the selling and servicing a particular category of business, if the company is not qualified to service the business. (1973, c. 818, s. 1; 1977, c. 828, s. 23.)

§ 58-248.38. Physical damage insurance availability. — No physical damage insurer shall refuse to make physical damage coverage available to any applicant for the reason that such applicant has, or may acquire, auto liability insurance through the Facility plan as provided herein; further that no such insurer may levy a surcharge or increased rate for such physical damage coverage on the basis that such applicant has, or may acquire, auto liability insurance through the Facility plan as provided herein.

Any such insurer or representative thereof failing to comply with, or otherwise violating the provisions of this section, shall be punished as prescribed in G.S. 58-248.4 and 58-248.5. (1973, c. 818, s. 1.)

§ 58-248.39. Hearings; review. — (a) Any applicant for a policy from any carrier, any person insured under such a policy, any member of the Facility and any agent duly licensed to write motor vehicle insurance, may request a formal hearing and ruling by the Board of Governors of the Facility on any alleged violation of or failure to comply with the plan of operation or the provisions of this Article or any alleged improper act or ruling of the Facility directly affecting him as to coverage or premium or in the case of a member directly affecting its assessment, and in the case of an agent, any matter affecting his appointment to a carrier or his account therewith. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request. The hearing may be held by any panel of the Board of Governors consisting of not less than three members thereof, and the ruling of a majority of the panel shall be deemed to be the formal ruling of the Board, unless the full Board on its own motion shall modify or rescind the action of the panel.

(b) Any formal ruling by the Board of Governors may be appealed to the Commissioner by filing notice of appeal with the Facility and Commissioner within 30 days after issuance of the ruling.

(c) The Commissioner shall issue an order approving the action or decision, disapproving the action or decision, or directing the Board of Governors to reconsider the ruling.

(d) Any aggrieved person or organization, any member of the Facility or the Facility may request a public hearing and ruling by the Commissioner on the provisions of the plan of operation, rules, regulations or policy forms approved by the Commissioner. The request for hearing shall specify the matter or matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matter or matters to be considered not less than 15 days in advance of the hearing date.

(e) In any hearing held pursuant to this section by the Board of Governors or the Commissioner, the Board or the Commissioner as the case may be, shall issue a ruling or order within 30 days after the close of the hearing.

(f) All rulings or orders of the Commissioner under this section shall be subject to judicial review as approved in G.S. 58-9.3. (1973, c. 818, s. 1.)

§ 58-248.40. Termination of North Carolina Automobile Insurance Plan. — The Commissioner of Insurance is authorized and directed to terminate the North Carolina Automobile Insurance Plan established pursuant to G.S. 20-279.34 when it appears to his satisfaction that the Facility herein established is fully operational and when the policies issued under the prior plan have expired. (1973, c. 818, s. 2.)